

Arkansas, Louisiana, New Mexico, Oklahoma, Texas, and 66 Tribal Nations

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National

1- A dozen groups challenge EPA decision to leave slaughterhouse regulations untouched, 12/19/19

<https://thehill.com/policy/energy-environment/475128-a-dozen-groups-challenge-epa-decision-to-leave-slaughterhouse-regs>

A dozen environmental and animal rights groups are suing the Environmental Protection Agency (EPA) over its decision not to update regulations that limit how much pollution from slaughterhouses can flow into rivers. In October, the agency announced it would not revise federal water standards for plants that discharge their processed wastewater directly into waterways, something critics say puts rivers at risk of being overwhelmed by nitrogen, spurring algae blooms that suffocate fish as well as plant life needed to keep rivers healthy.

2 – EPA Seeking Public’s Help on Decoding 2018 Brownfields Law, Bloomberg, 12/18/19

<https://news.bloombergenvironment.com/environment-and-energy/epa-seeking-publics-help-on-decoding-2018-brownfields-law>

The EPA is seeking the public’s help to decode a recent law affecting contaminated site liability for local and state governments. The BUILD Act, which became law in 2018, reauthorized the Environmental Protection Agency’s Brownfields Program and changed the conditions for non-federal governments to avoid liability when acquiring contaminated sites. But in the language Congress set, certain terms don’t have a clear meaning, Cyndy Mackey, who oversees EPA’s Superfund enforcement program, said at the agency’s brownfields conference in Los Angeles Dec. 11.

3 - ‘Unusual’ White House Interest Level in EPA Science Rule Review, Bloomberg, 12/19/19

<https://news.bloombergenvironment.com/environment-and-energy/unusual-white-house-interest-level-in-epa-science-rule-review>

Public interest groups say they’re encountering a surprising level of engagement from the White House regulatory clearinghouse over an EPA plan to change the way science feeds into new regulations. The Environmental Protection Agency’s April 2018 Strengthening Transparency in Regulatory Science (RIN:2080-AA14) proposal, also known as the “secret science” rule, would bar the agency from using scientific research that isn’t or can’t be made public, a sharp break from the EPA’s decades-old approach to regulatory science.

4 Federal Court Won’t Give EPA More Time on Landfill Methane Plan, Bloomberg, 12/18/19

<https://news.bloombergenvironment.com/environment-and-energy/federal-court-wont-give-epa-more-time-on-landfill-methane-plan>

A federal judge once again rebuffed EPA’s efforts to postpone the release of an overdue federal plan for Obama-era controls on methane-heavy landfill gas. Judge Haywood S. Gilliam Jr. of the U.S. District Court for the Northern District of California on Dec. 17 refused to reconsider the court’s imposition of a Nov. 6 deadline to release the final plan, while the Environmental Protection Agency appeals the decision.

Louisiana

5 – Activists: Knowledge of suspected slave cemeteries hidden during St. James permit fight for Formosa, Advocate, 12/18/19

https://www.theadvocate.com/baton_rouge/news/communities/ascension/article_7027ab3a-21d9-11ea-bc48-2388f0371a4a.html

Activists are accusing a Formosa Chemical subsidiary of having initially withheld from the general public its knowledge of two small cemeteries believed to hold the remains of slaves at the site proposed for a new plastics complex in St. James Parish. Disclosure of the grave sites could have added another factor for the parish Planning Commission and Parish Council to consider during the contentious parish land use debates in late 2018 over the permit needed for the \$9.4 billion complex to go forward, according to the groups that have been fighting the complex.

6 – Enslaved peoples' burial site could scrap \$9.4B chemical plant in St. James, WWL, 12/18/19

<https://www.wwltv.com/article/news/local/orleans/activists-fight-to-stop-chemical-plant-set-to-be-built-on-former-plantation-burial-site/289-493de622-c6ac-4bc7-a69b-995c2eddb0c4>

Before sugar cane is harvested in a field, it is burned, removing the outer leaves which are considered trash. For a sugar cane field in St. James Parish, it could be the last harvest as it is the proposed site for the \$9.4 billion Formosa Petrochemical Plant.

7 – \$958M coastal authority draft plan released for 2021; here's what projects that covers, Times Picayune, 12/18/19

https://www.nola.com/news/environment/article_e13f225a-211e-11ea-8b79-6bc66afc7535.html

A draft plan to spend \$958 million in fiscal year 2021 on hurricane flood reduction and coastal restoration projects, with more than half the money coming from settlements related to the 2010 BP Deepwater Horizon oil spill, was presented Wednesday to the state Coastal Protection and Restoration Authority. The so-called "annual plan" acts as the funding vehicle for the state's 50-year, \$50 billion coastal Master Plan for hurricane surge risk reduction and coastal restoration projects, as well as for programs that support the development of new projects and monitor the success of projects that have already been built.

8 – After backup threatened 'a significant risk to public health,' S&WB OKs emergency funding, Times Picayune, 12/18/19

https://www.nola.com/news/article_b7d18ec4-2198-11ea-a047-4facb6ed64d4.html

The New Orleans Sewerage & Water Board adopted an emergency declaration Wednesday to fix a broken valve on a Gentilly sewerage line that had the agency briefly preparing to pump raw sewage into the Mississippi River earlier this month. It was the latest in a string of mishaps deemed a danger to public health, including a turbine explosion Saturday at the agency's Carrollton power plant that injured three workers and an underground methane explosion Monday in the French Quarter that sent four manhole covers flying. No one was injured in that explosion, though the manhole covers damaged two parked cars in the 500 block of Dauphine Street, setting one on fire.

9– Judge: Army Corps of Engineers liable for Hurricane Harvey flooding damage, Times Picayune, 12/18/19

https://www.nola.com/news/courts/article_93fbe3e0-21ad-11ea-bca8-c73cab49fb22.html

A federal judge on Tuesday ruled the U.S. Army Corps of Engineers is liable for damages to a group of Houston-area homes and businesses that were flooded by two federally owned reservoirs during Hurricane Harvey because the inundation was due to how the federal government built and maintained the dams. The ruling by Senior U.S. Judge Charles Lettow on the U.S. Court of Federal Claims in Washington, D.C. is part of a test case involving 13 properties located upstream of the Addicks and Barker reservoirs that were flooded during Harvey in 2017.

10 – LDEQ reminds residents about illegally burning waste, KATC, 12/18/19

<https://www.katc.com/news/covering-louisiana/ldeq-reminds-residents-about-illegally-burning-waste>

The Louisiana Department of Environmental Quality is reminding residents that any open burning of household waste, solid waste and chemicals is illegal in the state of Louisiana. LDEQ says that whether conducted on private property or not, the act of burning that waste is still illegal. Open burning is harmful to those conducting the open burn as well as their families, neighbors, pets and livestock. The ash generated from an open burn contains toxic materials that contaminate our air, soil and ground water.

Texas

11 Sierra Club intervenes in open records lawsuit against Texas Attorney General, Texas Tribune, 12/18/19

<https://www.texastribune.org/2019/12/18/sierra-club-intervenes-open-records-lawsuit-against-texas-ag/>

The Sierra Club on Wednesday intervened in a lawsuit that the Texas Commission on Environmental Quality filed against the Texas Attorney General's Office in October over an open records ruling. In July, weeks after the TCEQ proposed increasing the acceptable limit on air emissions of a toxic gas known as ethylene oxide, Earthjustice submitted an open records request to the commission on behalf of the Sierra Club for records related to how the commission went about devising the rule. Instead of releasing them, TCEQ requested a decision from the Attorney General's office, which ruled in favor of the environmental groups in September.

12 Texas regulators want stiffer penalties for company whose Port Neches plant exploded, Texas Tribune, 12/19/19

https://www.texastribune.org/2019/12/18/texas-regulators-want-tougher-penalties-company-after-port-neches-blas/?utm_campaign=trib-social-buttons&utm_source=twitter&utm_medium=social

Environmental and watchdog groups have long criticized the Texas Commission on Environmental Quality for taking it too easy on polluters — and the TCEQ has often countered that its job is to coax industrial facilities into compliance rather than slap them with big fines. But on Wednesday, agency officials openly acknowledged that a proposed fine against Texas Petroleum Chemicals Group, known as TPC — the Houston-based company whose Port Neches chemical plant exploded last month — for more than a half-dozen unrelated violations that occurred in 2018 wasn't high enough and that its general enforcement approach may not be stringent enough.

13 Magellan Pipeline closure creates possibility of increased truck transport of anhydrous ammonia along Highway 65 and Interstate 70 through Saline County, Marshall Democrat-News, 12/18/19

<https://www.marshallnews.com/story/2656106.html>

Getting fertilizer to the field is critical for the continued production of our nation's food and fuel. Environmentally sound and safe transport of fertilizers is necessary to support continuing demands for our nation's and the world's growing population. Ammonia is the cheapest and most sure source of nitrogen in fertilizers. Anhydrous ammonia makes American farmers the most productive in the world and remains the primary ingredient in most fertilizers essential to the nation's agricultural system.

14 Industry, enviros contrasting accounts over flaring, Chron, 12/18/19

<https://www.chron.com/business/energy/article/Fight-over-Flaring-Industry-enviros-contrasting-14913506.php?cmpid=ffcp>

Environmentalists and the natural gas industry have issued contrasting accounts about flaring, the practice of burning off excess natural gas in the Permian Basin and other shale plays across the United States. Over the past week, the Washington, D.C.-based environmental group Earthworks and the industry-funded group Texans For Natural Gas released online statements that offer contrasting viewpoints of the issue.

15 Judge finds government liable for Harvey flooding, Greenwire, 12/18/19

<https://www.eenews.net/greenwire/2019/12/18/stories/1061845395>

The federal government is liable for flooding of some homes during Hurricane Harvey, a U.S. Court of Federal Claims judge ruled yesterday. The case highlights the Army Corps of Engineers' struggle to respond to increasingly intense and frequent storms. At issue in this case is damage that occurred to homes upstream of the Addicks and Barker reservoirs in Texas, which are owned

and operated by the Army Corps of Engineers and consist of U-shaped embankments meant to prevent downstream flooding in Houston.

16 Harris County To Get \$1M Grant For Air Monitors, KUHT, 12/18/19

<https://www.houstonpublicmedia.org/articles/news/energy-environment/2019/12/18/354564/harris-county-to-get-1m-grant-for-air-monitors/>

A \$1 million grant is coming to Harris County for air quality monitors and training. The grant is part of the petrochemical industry's response to the ITC plant fire in Deer Park earlier this year. Back in March, the ITC chemical fire spewed smoke and chemical runoff for days. The American Chemistry Council Foundation and the East Harris County Manufacturers Association are providing the funds with no required match by the county.

17 Federal Judge Rules Army Corps Of Engineers Responsible For Hurricane Harvey Damages, Texas Standard, 12/18/19

<https://www.texasstandard.org/stories/federal-judge-rules-army-corps-of-engineers-responsible-for-hurricane-harvey-damages/>

Houston-area homeowners and business owners scored a win Tuesday after a U.S. Court of Federal Claims judge ruled that the U.S. Army Corps of Engineers is responsible for losses they incurred after Hurricane Harvey. Gabrielle Banks covers federal courts for the Houston Chronicle. She says dams built decades ago, at Addicks and Barker reservoirs, didn't prevent flooding in some of Houston's outlying neighborhoods. In fact, the Corps of Engineers decided to open those dams to prevent flooding further downstream in downtown Houston. Banks says this recent lawsuit is one of two related to Harvey flooding.

18 Classes canceled at two schools after large recycling plant catches fire in Waxahachie, WFAA, 12/18/19

<https://www.wfaa.com/article/news/local/large-recycling-plant-fire-waxahachie/287-5144605d-7ad9-4e4b-a7e4-c71d1a8f3d06>

Classes were canceled at Life Middle School Waxahachie and Life High School Waxahachie Wednesday due to a fire at a nearby recycling facility, the school administration announced. They said they decided to close out of an abundance of caution.

Louisiana

20 Revealed: Denka lobbied to undermine science behind 'likely' cancer-causing toxin, Guardian, 12/19/19

<https://www.theguardian.com/us-news/2019/dec/19/denka-lobbied-likely-cancer-causing-toxin-undermine-science>

Facing public pressure to rein in its pollution, a Japanese chemical manufacturer has instead launched an aggressive, years-long campaign to undermine the science showing that its compounds could cause cancer, according to newly released documents reviewed by the Guardian. Chloroprene, the primary constituent of the synthetic rubber neoprene, is the major air pollutant in the town of Reserve, Louisiana, an area which according to the Environment Protection Agency (EPA) has the highest risk of cancer due to airborne toxins anywhere in the US.

New Mexico

21 Department Of Energy And NMED Hold Meeting On FY 2020 Consent Order Milestones, Los Alamos Reporter, 12/18/19

<https://losalamosreporter.com/2019/12/18/department-of-energy-and-nmed-hold-meeting-on-fy-2020-consent-order-milestones/>

New Mexico Environment Department (NMED) will hold a meeting Jan. 9, 2020, on the 2016 Compliance Order on Consent in order to fully understand what the issues are with the document. Stephanie Stringer Resource Protection Division Director said NMED wants to know what is working, what is perceived to not be working, what isn't working for the various parties.

22 State Plans To Keep Trying Vegetable Oil at Española Superfund Site, KUNM, 12/19/19

<https://www.kunm.org/post/state-plans-keep-trying-vegetable-oil-espola-superfund-site>

Dangerous dry-cleaning chemicals leached into the soil and the aquifer under Española decades ago. The Environmental Protection Agency pulled out recently after working on cleanup for 10 years, but some of the contamination remains. Now, the state's taking over, and ignoring investigators' recommendation to use a different cleanup method.

The EPA was using bioremediation—that's injecting vegetable oil into the ground to attract micro-organisms that break down the harmful chemicals. Reviewers looked at results mid-cleanup and said the vegetable oil method was not working in the deep parts of the plume. Their report says instead, the EPA should pump the groundwater out, clean it, and put it back.

23 UNM student assists Española water clean-up, Daily Lobo, 12/19/19

<https://www.dailylobo.com/article/2019/12/north-railroad-avenue-plume-espanola>

University of New Mexico law student Mara Yarbrough is working to bring environmental justice to the community members of Española, New Mexico and ensuring the U.S. Environmental Protection Agency (EPA) is sticking to their primary goals of protecting human health and the environment. Since giving a dissertation on the North Railroad Avenue Plume (NRAP) superfund site last year, Yarbrough said she realized there is a lack of communication and understanding between the people in Española and what the EPA is doing.

Oklahoma

24 Ottawa County interactive maps system helps detect land toxins, Four states, 12/18/19

<https://www.fourstateshomepage.com/news/ottawa-county-interactive-maps-system-helps-detect-land-toxins/>

A new interactive map in Ottawa County helps detect lead and other toxins on properties. The Oklahoma Department of Environmental Quality is running the system. If residents go online, they can see properties that have been remediated in pink. The map also allows you to zoom in and out and view properties up close.



A dozen groups challenge EPA decision to leave slaughterhouse regulations untouched

BY REBECCA BEITSCH - 12/18/19 02:01 PM EST

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Pierce Brosnan sees at least one 'step in the right direction' under Trump

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Dingell after Trump attack: 'Some things should be off limits'

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White House defends Trump's Dingell comments: 'The president is a counter-puncher'

ADMINISTRATION — 22M 27S AGO

Trump: 'Do-Nothing' Democrats want to 'Do-Nothing' with articles of impeachment

ADMINISTRATION — 23M 48S AGO

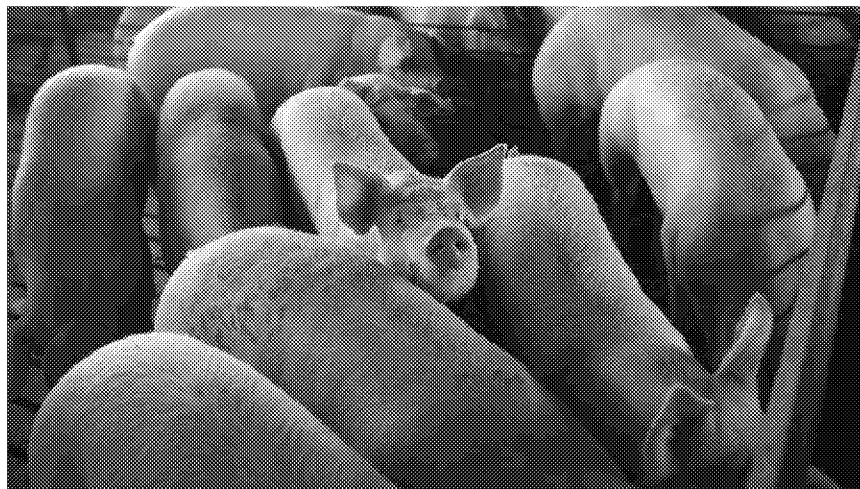
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A dozen environmental and animal rights groups are suing the Environmental Protection Agency (EPA) over its decision not to update regulations that limit how much pollution from slaughterhouses can flow into rivers.

In October, the agency announced it would not revise federal water standards for plants that discharge their processed wastewater directly into waterways, something critics say puts rivers at risk of being overwhelmed by nitrogen, spurring algae blooms that suffocate fish as well as plant life needed to keep rivers healthy.

The suit asks for judicial review of the decision to not update regulations that were last revised about 15 years ago and date back decades.

"Some of EPA's technological requirements for slaughterhouses date from the mid-1970s. Technology has changed a lot since then, and EPA needs to catch up," said Alexis Andiman with Earthjustice, one of the attorneys for the suit. "EPA's failure to update pollution standards for slaughterhouses is illegal—and it allows a major industry to continue cutting corners at the expense of communities and the environment."

The suit was filed on behalf of the Environmental Integrity Project, Food & Water Watch and the Humane Society of the United States, among others.

Impeachment and the FBI's Russia probe: Patriotism at its finest

OPINION — 35M 24S AGO

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The EPA said it would not comment on the pending litigation.

"EPA's national standards for water pollution from slaughterhouses are either weak and outdated or nonexistent," Sylvia Lam, an attorney with the Environmental Integrity Project, said in a statement. "It is well past time for EPA to crack down on this public health hazard. Cleaner plants have already installed technology to lessen the pollution they send into their local rivers and streams. By not updating these nationwide standards, EPA is rewarding dirty slaughterhouses at the expense of the public."

The suit follows a move from the EPA in June to weaken reporting requirements for major farms to document pollution from animal waste.

Across many industrial farms in the U.S., animal waste is collected and stored in open pits often called lagoons. As the manure decomposes it emits ammonia and hydrogen sulfide, which are linked to respiratory issues and other health problems.

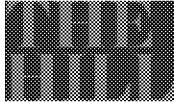
People who live near farms have long complained of the odor, but they also attribute asthma, headaches, nausea and a stinging sensation in their lungs to farm pollution. But farms have called the reporting requirements onerous.

Updated at 5:13 p.m.

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Environment & Energy Report

EPA Seeking Public's Help on Decoding 2018 Brownfields Law

By Sylvia Carignan

Dec. 18, 2019, 12:59 PM

-
- ◆ EPA working toward guidance for state and local government liability
 - ◆ BUILD Act changes affect governments with brownfield sites
-

The EPA is seeking the public's help to decode a recent law affecting contaminated site liability for local and state governments.

The BUILD Act, which became law in 2018, reauthorized the Environmental Protection Agency's Brownfields Program and changed the conditions for non-federal governments to avoid liability when acquiring contaminated sites. But in the language Congress set, certain terms don't have a clear meaning, Cyndy Mackey, who oversees EPA's Superfund enforcement program, said at the agency's brownfields conference in Los Angeles Dec. 11.

The EPA is asking state and local governments to weigh in on what they do with contaminated sites to avoid liability and what concerns they have about being liable for a site, Craig Boehr, attorney-adviser in the EPA's Office of Site Remediation and Enforcement, said during an online listening session Dec. 18.

Under the new law, a state or local government that acquired a site "by virtue of its function as sovereign" wouldn't be a liable party.

"How should we interpret this? I'm asking the question and I worked on this legislation," Susan Bodine, EPA's assistant administrator for enforcement and compliance, said at the conference.

Once the agency is able to interpret the language, it will issue guidance for the affected parties, Mackey said at the conference.

Previous Waiver Also Unclear

Previous language waived liability for state and local governments that involuntarily acquired a property, which was also unclear to those parties, Matthew Sander, also an attorney-adviser in the EPA's Office of

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'RENAISSANCE,' GOVERNOR SAYS

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2 PROJECT, OFFICIALS SAY ▶

Parties that are interested in acquiring contaminated properties or land adjacent to contaminated properties may be concerned about becoming liable for the toxic substances on the site. The EPA has multiple means of addressing parties' liability concerns.

"Local acquisition has been an issue since the early '90s," Judy Sheahan, assistant executive director for the environment at the U.S. Conference of Mayors, said during the listening session. "While we have come a long way, we were hoping the BUILD Act would build on that success."

The agency is accepting comments via email until Jan. 15.

The EPA started the Brownfields Program in 1995 to provide grants to clean up and redevelop properties where contaminants are present or potentially present. The brownfields law—also known as the 2002 Small Business Liability Relief and Brownfields Revitalization Act—expanded technical and financial assistance for site remediation.

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Environment & Energy Report

'Unusual' White House Interest Level in EPA Science Rule Review

By Stephen Lee

Dec. 19, 2019, 5:01 AM

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- Office of Information and Regulatory Affairs deeply engaged in review of EPA's 'secret science' rule
 - Agency denies suggestions of any changes to its normal process
-

Public interest groups say they're encountering a surprising level of engagement from the White House regulatory clearinghouse over an EPA plan to change the way science feeds into new regulations.

The Environmental Protection Agency's April 2018 Strengthening Transparency in Regulatory Science (RIN:2080-AA14) proposal, also known as the "secret science" rule, would bar the agency from using scientific research that isn't or can't be made public, a sharp break from the EPA's decades-old approach to regulatory science.

Critics call the proposal a bid to sideline the science used to regulate drinking water, air quality, and toxic chemicals, because the EPA could no longer rely on epidemiological studies that use private medical information. But EPA defends its proposal by saying it will disclose more information for stakeholders who take part in rulemakings.

The proposal has been under review by the Office of Information and Regulatory Affairs since Nov. 12. As part of that process, OIRA has met with interested parties—and asked far more questions than is typical—said representatives of three environmental and health groups.

'Usually in Listening Mode'

"They were asking a lot of questions about how the scientific process works," said John Walke, director of the Natural Resources Defense Council's clean air, climate, and clean energy program. "It was clear they had heard rejoinders and rebuttals that countered the EPA narrative from prior participants in those meetings."

Walke said that during a Dec. 10 meeting with OIRA officials he was questioned more thoroughly than in two dozen similar meetings over a nearly 20-year career, which included a three-year stint at EPA.

Most of those who spoke to Bloomberg Environment during several weeks of reporting for this story agreed that the White House engagement in the process in this case is atypical.

"This does seem unusual," said Tom McGarity, an administrative law professor at the University of Texas at Austin. "My experience is that they're usually in listening mode."

And Stuart Shapiro, a former OIRA desk officer and assistant branch chief in the Clinton and George W. Bush administrations, estimated that in at least 95% of the meetings he attended: "We just sat there and listened, maybe asked a question or two to be polite."

'Ridiculous' Claim, OMB Says

But the Office of Management and Budget, which houses OIRA, denied that it's taking an unusually close look at the secret science rule.

"OIRA meets with outside groups regularly and takes those meetings very seriously," an OMB spokesperson, who insisted on not being publicly identified, told Bloomberg Environment. "The assertion that OIRA is only 'exceptionally engaged' in certain meetings is ridiculous and there is no evidence whatsoever to back up that claim. This is just another attempt by eco-left environmental groups to pitch an OIRA hit piece to the press."

Bridget C.E. Dooling, a former OIRA deputy chief, senior policy analyst, and attorney under the George W. Bush, Obama, and Trump administrations, agreed that "it's pretty normal for government folks to ask questions in these meetings."

The description of OIRA's engagement in the secret science rule process is "common enough that it doesn't surprise me," said Dooling, now a research professor at George Washington University's Regulatory Studies Center. She also said the questioning struck her as "within the range of normal behavior."

'People Post Everything on Facebook'

Matthew Davis, legislative director at the League of Conservation Voters, said he was asked half a dozen questions in his Nov. 26 OIRA meeting, including why he's objecting to specific parts of the rule when the proposal hasn't yet been issued, whether scientific journals don't already require the publication of personally identifying data, and whether scientific best practices call for studies to be reproducible.

Paul Billings, national senior vice president of public policy at the American Lung Association, said OIRA staff was so engaged that his Nov. 20 meeting ran to nearly twice its scheduled half-hour time, which Billings said he has never experienced before.

Walke said that at one point during his meeting, an OIRA staffer asked why privacy is so important "when people post everything on Facebook."

OIRA's website as of Dec. 18 lists 12 meetings held on the proposed rule and six scheduled. All were with public interest groups.

The EPA declined to comment, saying it doesn't weigh in on rulemakings during interagency review.

Council of Economic Advisers Involvement

All three stakeholders who spoke with Bloomberg Environment also said a representative from the White House Council of Economic Advisers attended. Participation from that level of government is rare and could signal the White House sees the rule as being especially significant, said Shapiro, the former OIRA desk officer.

But Dooling said she considered CEA's participation to be customary.

OIRA's level of interest could reflect anything from a desire to understand the best arguments, to preparation for responses to criticisms, said Shapiro, now a professor at Rutgers University's Edward J. Bloustein School of Planning and Public Policy.

The intensity of the questioning also might suggest that OIRA wants to bring all the criticisms of the proposal to the surface in hopes of resolving a standoff between itself and the EPA that would require the White House to get involved, said Cary Coglianese, director of the regulatory law program at the University of Pennsylvania.

OIRA's interest might also be linked to the fact that the rulemaking could set a precedent for how other agencies handle science, Coglianese said.

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Environment & Energy Report

Federal Court Won't Give EPA More Time on Landfill Methane Plan (1)

By Amena H. Saiyid

Dec. 18, 2019, 11:45 AM; Updated: Dec. 18, 2019, 1:45 PM

- EPA fails in its attempt to postpone the release of a federal plan to limit municipal landfill emissions
- Court says EPA won't face a substantial burden as it's already issued a proposed plan and taken comments on it

A federal judge once again rebuffed EPA's efforts to postpone the release of an overdue federal plan for Obama-era controls on methane-heavy landfill gas.

Judge Haywood S. Gilliam Jr. of the U.S. District Court for the Northern District of California on Dec. 17 refused to reconsider the court's imposition of a Nov. 6 deadline to release the final plan, while the Environmental Protection Agency appeals the decision.

This is the second time Gilliam has rebuffed the EPA's efforts to seek a delay in the mandated deadline. On Nov. 5, one day before the plan was due, Gilliam rejected EPA's request to alter its May judgment with new deadlines that the agency had issued in a separate rulemaking in late August.

"The EPA's compliance with its judgment is not a substantial burden, since it has already promulgated and received comments on the Proposed Federal Plan," Gilliam wrote in the Dec. 17 order.

Gilliam's order means the EPA has to issue a final plan or wait for the Ninth Circuit to stay the May ruling while it goes through the appeals process. The EPA said it doesn't comment on pending litigation.

Landfills Third Largest Methane Emitter

Landfills emit gas that includes the potent greenhouse gas methane, carbon dioxide, and hazardous air pollutants. Methane warms the atmosphere at a rate more than two dozen times that of carbon dioxide.

According to the EPA's annual greenhouse gas inventory, landfills are the third largest emitter of methane in the U.S.

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A day before the plan was due, however, Gilliam rejected EPA's request to alter the judgment so it could get delay releasing the final plan.

The proposed federal plan came after nearly two years of inaction and attempts by the Trump administration to delay the Obama-era deadlines.

Eight states led by California, along with the Environmental Defense Fund, ultimately forced the EPA's hand. These same coalitions are now separately challenging the EPA's rule that seeks to postpone the compliance deadlines.

The EPA's 2016 rules updated a set of Clinton-era regulations requiring new and existing landfills to install controls to capture emissions. The requirements at issue in the deadline debate are those for existing facilities.

The case is California v. EPA, N.D. Cal., No. 18-03237, 12/17/19.

(Updated with EPA's comment in the fifth paragraph.)

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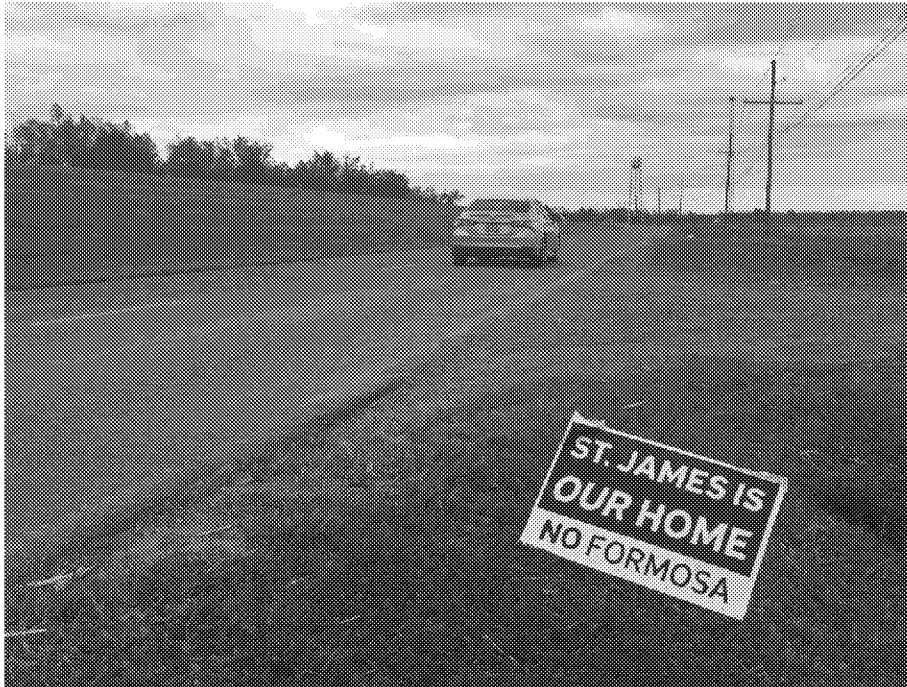
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Activists: Knowledge of suspected slave cemeteries hidden during St. James permit fight for Formosa

BY DAVID J. MITCHELL | STAFF WRITER
DEC 18, 2019 - 6:25 PM



A car zips southward down River Road toward the Welcome water tower, background, as nearby cane fields continue to be harvested on Dec. 7, 2018, in St. James Parish. A \$9.4 billion Formosa Chemical facility known as FG LA LLC is planned just to the north of this area but has engendered opposition in Welcome and in other communities along the Mississippi River in the parish.

BY DAVID J. MITCHELL | DMITCHELL@THEADVOCATE.COM

David Mitchell

WELCOME — Activists are accusing a Formosa Chemical subsidiary of having initially withheld from the general public its knowledge of two small cemeteries believed to hold the remains of slaves at the site proposed for a new plastics complex in St. James Parish.

Disclosure of the grave sites could have added another factor

2018 over the permit needed for the \$9.4 billion complex to go forward, according to the groups that have been fighting the complex.

Activists want \$9.4B Formosa project stopped due to slave cemetery at St. James site

With that permit now in hand, Formosa is pursuing state air and operating permits pending before the state Department of Environmental Quality.

After filing public records requests in November, Rise St. James, the Center for Constitutional Rights and others unearthed archaeological reports by Formosa's contractors since mid-2018 gradually peeling back a slice of the pre- and post-Civil War history underneath the land.

Victor Franckiewicz Jr., a parish government attorney who handles land use matters, said he could recall no instance when Formosa disclosed the grave sites in public hearings over the land use permit.

Formosa's initial archaeological investigation required for state permits did not find any grave sites, but an unnamed independent researcher informed the state in late July 2018 about an 1878 map showing two graves sites on the land, according to reports the groups obtained.

One of the sites was associated with the old Buena Vista Plantation and is now in buffer land along the nearly 2,400-acre site. Researchers found at least four human burials and eight

grave shafts and the grave site is now fenced off, a June report says.

The other, associated with the Acadia Plantation, was more centrally on Formosa's property in the west bank community of Welcome and would be at the site of a utility plant that a company lawyer said would be difficult to move, a company email says. Subsequent archaeological investigations determined the cemetery, if it existed, was destroyed by borrow pits dug years before the company owned the land, according to a June report.

In a letter submitted Wednesday to DEQ, attorneys for the Center of Constitutional Rights said each investigation has turned up more grave sites and they fear more graves could exist on company land.

They also pointed to an email from a Formosa attorney soon after the graves came to light in mid-2018 where the attorney discussed the possibility of relocating the remains at the Acadia site and that the state would grant those permits "quickly, within a matter of days."

"While site investigators believe the cemetery may have already been destroyed by past ground disturbances — unconnected to Formosa — Rise St. James is concerned that if remains are subsequently located in this area, the company may chose to move quickly to remove them," the letter says.

Greg Langley, spokesman for DEQ, said he could not speak about the Formosa permit. He noted that, in other cases, old grave sites haven't prevented the issuance of air permits but the companies must allow access to the sites.

Janile Parks, a spokesman for FG LA LLC, said documentation about the graves was submitted to the state and was publicly available before the parish land use permit was granted.

Parks pointed to an environmental assessment statement dated Jan. 7, 2019, and submitted to DEQ that includes information about the survey work related to the grave sites.

The Parish Council granted final approval on Jan. 23, 2019, after an appeal by Rise St. James. The Buena Vista grave site was confirmed in late October 2018, said Pam Spees, senior attorney with the center.

St. James residents' opposition is unlikely to derail planned Formosa plant

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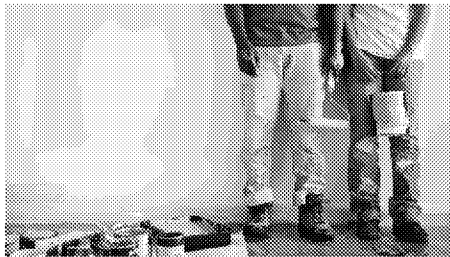
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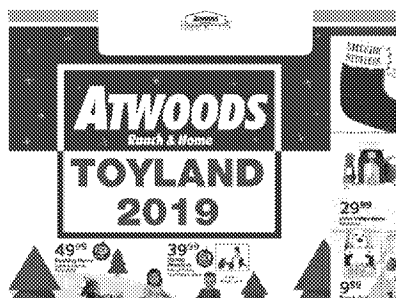
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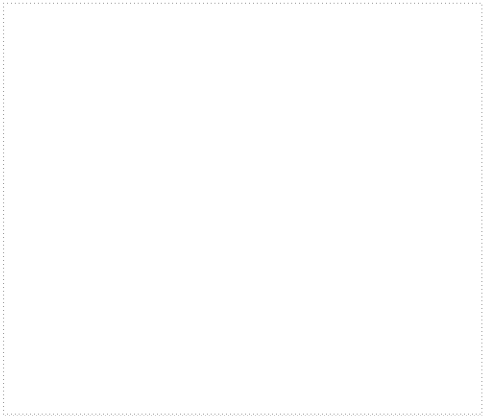
Enslaved peoples' burial site could scrap \$9.4B chemical plant in St. James

An archaeological survey confirmed four human burials, several grave shafts, historic posts and cultural material located at the site.

ST. JAMES PARISH, La. — Before sugar cane is harvested in a field, it is burned, removing the outer leaves which are considered trash.

For a sugar cane field in St. James Parish, it could be the last harvest as it is the proposed site for the \$9.4 billion Formosa Petrochemical Plant.

Sharon Lavigne is a director for RISE St. James, a grass-roots community group opposing the building of another industrial complex in their community. Along the road where she lives are industrial plants and farms, some only a stone's throw from the homes that are left.



"I live two miles away and it's devastating to know they want to live and build a plant in the area where we live," Lavigne said. "We are already bombarded with 12 of them."

The latest revelation of where the proposed site would be built has preservationists and community members alike in arms.

In the 1800s, the sugar cane field was a plantation. Documents show it was once owned by a man named Benjamin Winchester. Hundreds of enslaved workers were buried there.

"It's sacred ground. That's people that were buried there not animals," Lavigne said. "Those are people who lived there, worked there and worked on that land."

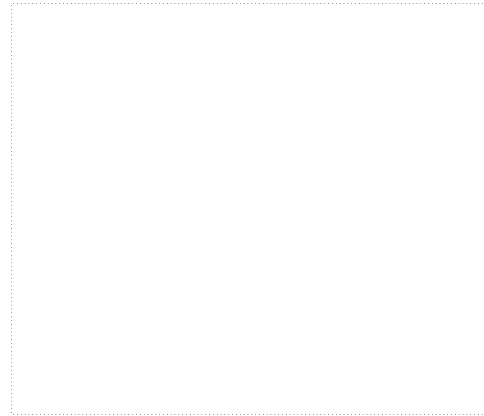
Pam Spees of the Center for Constitutional Rights says archaeologist with the state department confirmed the burial site after an independent archaeologist working on a separate project reached out with a map to locate the burial grounds.

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"The difference is now there is a way to map some of these cemeteries," Spees said.

The state division of archaeology asked Formosa to focus on two unmarked sites: the Acadia Cemetery and Buena Vista Cemetery. Due to the sites being unmarked, archaeologists believe they are the gravesites of enslaved people.

In their Supplemental Environmental Assessment Statement submitted to the Louisiana Department of Environmental Quality, TerraXploration's, the company contracted by Formosa to do the archaeological survey, confirmed four human burials, several grave shafts, historic posts, and cultural material.



"The confirmed burial site already has a pipeline running through it from years ago, the other one may already have been destroyed," Spees said.

Eyewitness News anchor Charisse Gibson visited St. James and noticed the area where the Buena Vista gravesite was located was fenced off.

While both the state and TerraXploration's don't believe more surveys need to be conducted for the Acadia cemetery, Spees isn't convinced.

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"There was a third site investigation where they learned the first burial site they confirmed was actually larger than what they mapped the first time," Spees said. "It's quite possible that there are gravesites out there that could also be disturbed or desecrated through construction inadvertently."

It's a possibility that Spees' and Lavigne's hope leads the LDEQ to pause permit applications for the proposed petrochemical plant.

WWL-TV reached out to Formosa to get their response to RISE St. James' concerns but did not hear back. In the meantime, RISE St. James is appealing to the DEQ to not grant air permits to Formosa.

proposed St. James plant could be built over burial site

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\$958M coastal authority draft plan released for 2021; here's what projects that covers

BY MARK SCHLEIFSTEIN | STAFF WRITER

DEC 18, 2019 - 11:07 AM



File photo -- Wetlands south of New Orleans is seen during a flyover of coastal Louisiana on Friday, May 18, 2018. (Photo by Brett Duke, Nola.com | The Times-Picayune)

(Photo by Brett Duke, NOLA.com | The Times-Picayune)

Mark
Schleifstein

A draft plan to spend \$958 million in fiscal year 2021 on hurricane flood reduction and coastal restoration projects, with more than half the money coming from settlements related to the 2010 BP Deepwater Horizon oil spill, was presented Wednesday to the state Coastal Protection and Restoration Authority.

The so-called "annual plan" acts as the funding vehicle for the state's 50-year, \$50 billion coastal Master Plan for hurricane surge risk reduction and coastal restoration projects, as well as for programs that support the development of new projects and monitor the success of projects that have already been built.

In presenting the plan to the CPRA board of directors, Executive Director Bren Haase pointed out that funding of some projects with offshore oil revenue remains uncertain, as the amount of money the state will receive in fiscal year 2021 has not been determined.

The authority will vote on the plan in February, after public hearings and a public comment period.

Haase said the list of projects does not include several major restoration projects funded by BP money that are being built by federal agencies.

Much of the BP money will be used for coastal restoration projects in the southeastern and south central parts of the state, which were most affected by oil from the BP spill.

The plan, which will be presented to the Legislature next spring, also will use a portion of nearly \$113 million of the state's share of offshore oil revenue to pay part of the costs of several long-awaited flood protection projects.

The plan represents an increase of more than \$170 million in coastal levee and restoration spending, compared to the fiscal year 2020

plan that is in place now — a jump of nearly 20 percent.

The state also predicts it will spend about \$901 million on coastal projects in fiscal year 2022 and \$1.27 billion in fiscal year 2023, again largely because of expected BP-related revenue.

A variety of BP-related settlements will direct more than \$12 billion to the state through 2029, the end of the settlements' 15-year payment schedule.

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In the New Orleans area, the proposed spending includes a \$35 million first payment for a project to re-create part of the Golden Triangle marshes in the northwest corner of the Lake Borgne shoreline, adjacent to the lake's surge barrier.

Another \$21.5 million is to be spent to begin building a “living shoreline” of oyster reefs along the rapidly eroding eastern edges of the Biloxi Marsh, on the southeastern edge of Lake Borgne in St. Bernard Parish.

Both of those projects are expected to be funded by money from the \$5 billion that BP has agreed to spend in Louisiana to restore natural resources after the spill. But both are also still awaiting final approval by federal and state trustees who oversee the natural resource damage assessment process.

Other pots of BP money come from criminal and civil settlements of federal law violations; those must be used for other environmental or economic restoration projects.

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Already approved, however, is the \$76.1 million first increment of a plan to re-create marsh along the southwestern edge of Lake Borgne, where the Mississippi River-Gulf Outlet contributed to major erosion problems.

Also already approved is \$50.8 million for the Spanish Pass portion of a larger plan to rebuild a ridge and create marsh in the Barataria Basin in Plaquemines Parish.

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The spending plan
also includes \$23
million in engineering
and design money for
the proposed Mid-
Barataria Sediment
Diversion near Myrtle

Grove on the west
bank of the Mississippi River in Plaquemines,
and \$22.5 million for the proposed Mid-Breton
Sediment Diversion on the east bank.

Another \$72.2 million in BP money is set aside
for part of the cost of the West Grand Terre
beach nourishment and stabilization project in
southern Plaquemines. And \$103.7 million in BP
money will be used for similar barrier island
restoration and beach nourishment projects in
Terrebonne Parish.

The flood-risk reduction projects proposed for
funding by the annual plan include \$50 million
for a permanent Bayou Chene barge gate,
which will aim to reduce damage in the
Morgan City area from high water on the
Atchafalaya River during spring floods. A
temporary barge gate was installed early this
year to deal with that threat.

The east and west bank levee systems in the New Orleans area will gain \$38 million being set aside for land and other expenses that local sponsors are required to pay when the Army Corps of Engineers builds or improves levee projects. Another \$11.7 million will be spent on segments of the east bank levee system, and \$500 million has been set aside for other West Bank levee expenses.

The annual plan also includes \$4 million in state money to repair St. Bernard Parish pump stations that are being turned over to the parish by the east bank levee authority as part of a settlement of differences over who will pay future interior drainage costs in the parish.

The Morganza to the Gulf levee project also will receive \$2.7 million from the state.

The annual plan also will continue to fund levee improvements in the Jean Lafitte area of Jefferson Parish, including \$6.5 million for part of the Rosethorne Basin levee and \$600,000 for tidal protection.

The plan also will continue to support initial efforts to improve storm surge protection in St. Tammany Parish, with \$600,000 for a parish

coastal protection study and \$100,000 for planning costs of a ring levee in Slidell.

In addition to the \$580.4 million from BP spill-related settlements, the annual plan expects to receive \$113 million from the federal Gulf of Mexico Energy Security Act, which directs 37 percent of revenue from federal leases off Louisiana's coastline to the state.

The state also includes in the plan about \$98 million associated with the federal Coastal Wetlands Planning, Protection and Restoration Act. While most of that money represents the 15 percent share of individual CWPPRA projects that the state pays for, some of it also represents surplus money returned after some projects are completed.

Public hearings on the annual plan will be heard on Jan. 6 at Lakefront Airport in New Orleans, on Jan. 7 at the Houma Civic Center, and on Jan. 8 at the Lake Charles Civic Center. Each of the hearings will begin at 5:30 p.m with an open house, followed by a presentation on the plan and time for public comments.

Public comments can be submitted to the CPRA on the spending plan through Feb. 15 by email at coastal@la.gov, or by mail at 150 Terrace Ave, Baton Rouge, LA 70802.

Mark Schleifstein covers the environment and is a leader of the Louisiana Coastal Reporting Team for The Times-Picayune / The New Orleans Advocate

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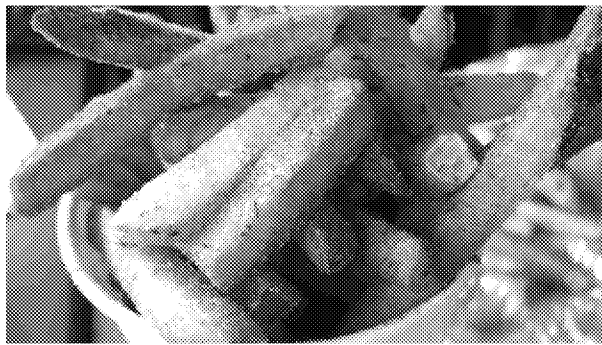
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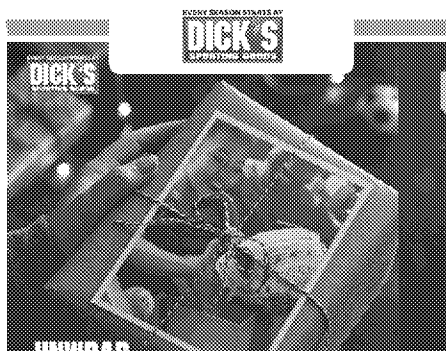
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After backup threatened 'a significant risk to public health,' S&WB OKs emergency funding

BY CHAD CALDER AND CARLIE KOLLATH WELLS | Staff writers

PUBLISHED DEC 18, 2019 AT 9:00 AM | UPDATED DEC 18, 2019 AT 7:57 PM



File photo

Chad Calder

The New Orleans Sewerage & Water Board adopted an emergency declaration Wednesday to fix a broken valve on a Gentilly sewerage line that had the agency briefly preparing to pump raw sewage into the Mississippi River earlier this month.

It was the latest in a string of mishaps deemed a danger to public health, including a turbine explosion Saturday at the agency's Carrollton power plant that injured three workers and an underground methane explosion Monday in the French Quarter that sent four manhole covers flying. No one was injured in that explosion, though the manhole covers damaged two parked cars in the 500 block of Dauphine Street, setting one on fire.

The emergency declaration, passed unanimously by the board, will allow the job to be bid out and repairs made more quickly, as the broken valve at Pump Station D is currently being held open by a hydraulic jack and wooden wedges.

Crews discovered the problem Dec. 2 and spent about six hours trying to get the valve open as sewage backed up into the system.

It was during this period that the agency considered the possibility of diverting sewage away from the valve and dumping it into the river in order to keep it from backing up into the streets, or worse, causing a blowout that would be a "significant risk to public health," the emergency declaration reads.

Ultimately, the agency did not need to take that step, Executive Director Ghassan Korban said.

"It was reacted to well and in a timely fashion, and it was well contained," Korban said. "But it's a very serious issue and we're taking it seriously, and that's why the emergency declaration took place in order to expedite the solution."

Pump Station D, just north of Almonaster and Florida avenues, is one of two east bank stations that collect sewage from Lakeview, the 7th Ward and Gentilly. From there it is sent through a 60-inch force main line to the East Bank Wastewater Treatment Plant.

The declaration cites another leak in that line, near the railroad tracks, though Korban said it was not caused by the stuck valve. He said it is included in the declaration because it is a nearby part of the same system and it makes sense to fix both problems at once.

"There's no danger; it's very well managed," Korban said of the leak. "Anything that is seeping out of the actual pipe is being contained and is being pumped back in the system."

Korban said having the valve propped open isn't ideal, but it keeps the sewage flowing until crews can get it fixed.

Bob Turner, the S&WB's general superintendent, said workers have already started putting scaffolding into place and will install a lifting mechanism in the next week or so to begin the work.

The declaration also says there are two other valves in Sewer Pump Station D that are at risk of catastrophic failure, as well as a constant duty pump that isn't working.

By approving the emergency measure, the S&WB is allowing all of this work to be done without formally advertising for bids, without a cost cap and without designating where the money will come from.

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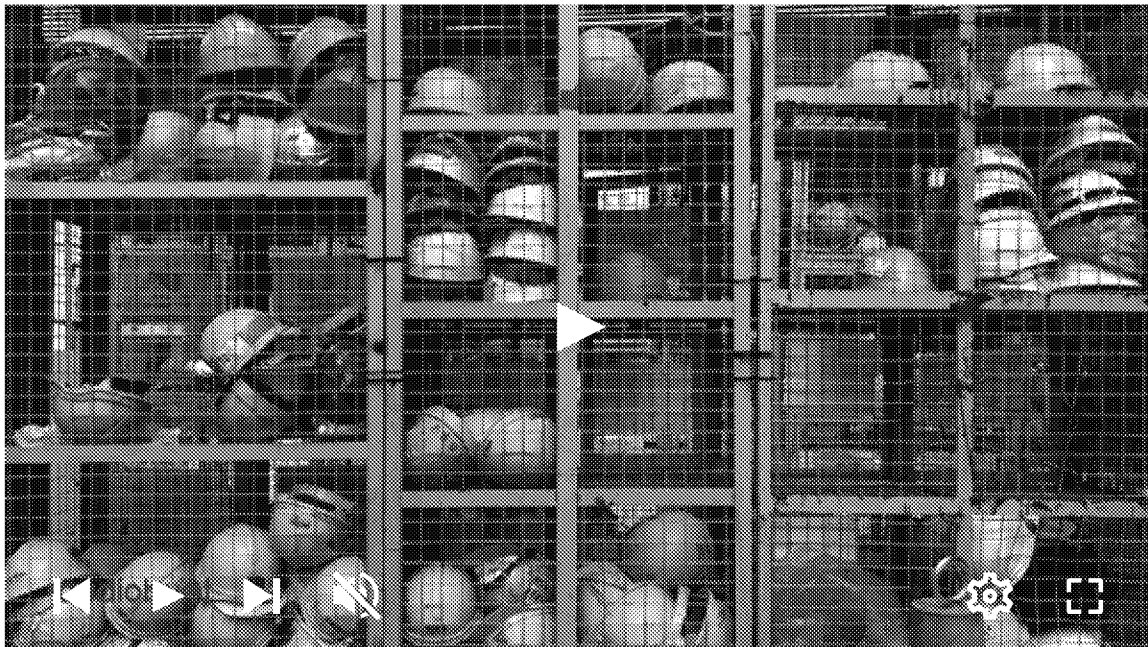
There were no estimates provided on what the work could cost, though the declaration said the work would take "several weeks."

The prospect of releasing sewage into the river would be an apparent violation of a federal consent decree under which the city's sewer system has operated for two decades.

The S&WB was put under a consent decree with the U.S. Environmental Protection Agency and U.S. Department of Justice in 1998 after it was accused of violating the Clean Water Act by dumping untreated sewage into Lake Pontchartrain, the Mississippi River and other water bodies.

The decree requires the complete rehabilitation of the city's sewerage system, which entails an estimated \$206 million in remaining work, by 2025.

The S&WB said the decree allows sewage to be discharged into the river in extreme circumstances.



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Judge: Army Corps of Engineers liable for Hurricane Harvey flooding damage

BY THE ASSOCIATED PRESS

DEC 18, 2019 - 10:04 AM



In this Sept. 4, 2017, file photo, a car is submerged in floodwater in the aftermath of Hurricane Harvey near the Addicks and Barker reservoirs in Houston. (AP Photo/David J. Phillip)

Eli Lehrer Special to Tribune News Service

Associated
Press

A federal judge on Tuesday ruled the U.S. Army Corps of Engineers is liable for damages to a group of Houston-area homes and businesses that were flooded by two federally owned reservoirs during Hurricane Harvey because the inundation was due to how the federal government built and maintained the dams.

The ruling by Senior U.S. Judge Charles Lettow on the U.S. Court of Federal Claims in Washington, D.C. is part of a test case involving 13 properties located upstream of the Addicks and Barker reservoirs that were flooded during Harvey in 2017.

Attorneys for the property owners said the Corps of Engineers knew for decades the reservoirs' capacity would exceed federal land and inundate homes and businesses on adjacent private property.

Their lawyers say structures upstream of the reservoirs were built in areas known as flood pools, where water collects as the dams fill up. Their attorneys say the federal government doesn't own all the land that encompasses this flood pool and a portion of the flood pool is on private property.

In his 46-page ruling, Lettow wrote that "the flooding that occurred was the direct result of calculated planning."

"Here, the evidence demonstrates the Corps was aware or should have been aware since the initial construction of the dams and at every point onward, that the flood pools in the Addicks and Barker Reservoirs would at some point (and thereafter) exceed the government-owned land, inundating private properties," Lettow wrote.

The judge's ruling came after a two-week trial in May in Houston in which more than 30 witnesses testified.

“The government was responsible for creating an emergency, and these citizens were the innocent victims of those calculated decisions. We look forward to pushing the case through the damages phase and achieving justice for the upstream flood victims,” said Daniel Charest, one of the attorneys for the residents and business owners, who are among hundreds of lawsuits filed in connection with flooding from the two reservoirs.

In 2018, the U.S. Court of Appeals for the Federal Circuit, based in Washington, D.C., overturned similar rulings by a federal claims court judge who found that the Corps’ construction of the Mississippi River-Gulf Outlet caused flooding, resulting in a “taking” from property owners in St. Bernard Parish and the Lower 9th Ward of New Orleans worth potentially billions of dollars. The appellate court found that the lower court decisions did not consider projects the Corps had built that actually provided flood protection. The U.S. Supreme Court later upheld the appellate decision.

In the Texas case, Lettow’s ruling means upstream property owners are eligible to seek certification as a class and move the case to trial to determine damages, Charest said.

An email seeking comment from the U.S. Department of Justice, which represents the Corps of Engineers, was not immediately returned Tuesday night.

During the May trial, William Shapiro, a Justice Department, had argued Harvey was a “historically large rainfall event” that was unprecedented and “flooding in a storm of this size was inevitable.”

The home and business owners allege the federal government violated the takings clause of the Fifth Amendment, which states private property can’t be taken for public use without just compensation.

Harvey, which made landfall as a Category 4 storm on Aug. 25, 2017, killed 68 people and caused an estimated \$125 billion in damage in Texas. In the Houston area, Harvey caused 36 deaths and flooded more than 150,000 homes.

Around the reservoirs, located about 20 miles (30 kilometers) west of downtown Houston, more than 10,000 properties flooded.

When it doesn't rain, land around the two dams, built more than 70 years ago, is dry, green space with parks. Many residents who flooded said they were unaware their homes were built on land used as a reservoir.

During heavy rainfall events, the dams are closed to collect water from local bayous and creeks and ensure it doesn't flow at an uncontrolled rate downstream to downtown Houston and the Houston Ship Channel.

Houses downstream of the dams also flooded when officials released water after concerns the reservoirs could fail. Homeowners who were flooded downstream have also sued and their lawsuits are being handled separately.

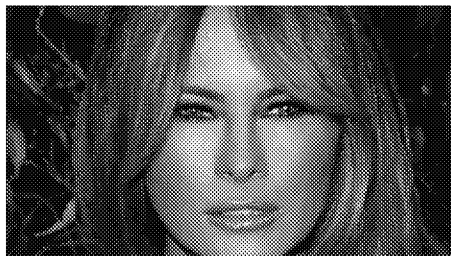
-Staff writer Mark Schleifstein contributed to this report.



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By PinchFeed

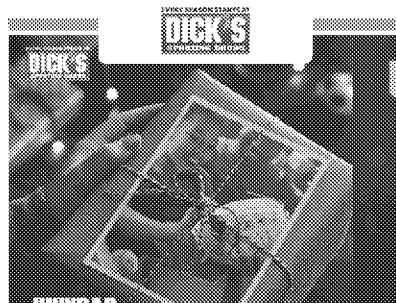
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LDEQ reminds residents about illegally burning waste

Posted: 3:15 PM, Dec 18, 2019 **Updated:** 3:15 PM, Dec 18, 2019

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The Louisiana Department of Environmental Quality is reminding residents that any open burning of household waste, solid waste and chemicals is illegal in the state of Louisiana.

LDEQ says that whether conducted on private property or not, the act of burning that waste is still illegal. Open burning is harmful to those conducting the open burn as well as their families, neighbors, pets and livestock. The ash generated from an open burn contains toxic materials that contaminate our air, soil and ground water.

According to a release from LDEQ, when burned, household trash releases toxic pollutants into the air such, as hydrogen chloride, hydrogen cyanide, phosgene, sulfur dioxide, dioxin, carbon monoxide and heavy metals. These pollutants can cause health problems for anyone nearby. Health impacts include damage to the lungs, nervous system, kidneys and liver. Asthma, chronic bronchitis, emphysema and cancer are other potential problems.

It is recommended that those without trash pickup service deliver their waste to a landfill for proper disposal.

LDEQ asks for residents to consider the following alternatives to open burning:

- Reduce, Recycle and Reuse as much as possible.
- Compost vegetative matter such as eggshells, coffee grounds and

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- Used fluorescent light bulbs, batteries and plastic grocery bags are accepted for recycling at many big box stores.
- Electronics (laptops, iPhones, etc.) you no longer need are accepted by the CACRC at www.cacrc.com.
- Deliver any household waste to a landfill or trash disposal location within your city or parish.
- Construction and demolition waste should be disposed of at permitted landfills, municipal incinerators or other state-approved facilities.
- Talk to your neighbors. Inform them about the importance of stopping Open Burning. Make it a priority for the sake of you and your family's health and the environment in which you live.

LDEQ encourages citizens to watch for open burning activity and to protect yourself as well as your family and your neighbors. Report any open burn of waste tires, household debris, oil or chemical waste, to your local law enforcement authorities as well as LDEQ at 1-888-763-5424.

Citizens should also submit an incident report online at <http://www.deq.louisiana.gov/apps/forms/irf/forms/> [deq.louisiana.gov] .

Reports can be made anonymously, but a phone number is required for a call back if further details are needed. Be sure to document the exact location and parish, time/date, materials being burned, parties involved and as much detail as possible in order to better assist authorities with an investigation.

If anyone is found to be conducting an open burn, LDEQ's Criminal

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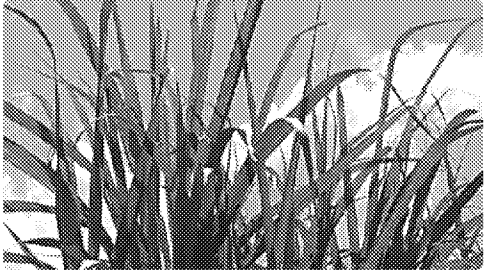
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LDEQ's recent video on electronic waste recycling video can be viewed here:
<https://www.youtube.com/watch?v=OIGsvKvnqOY>

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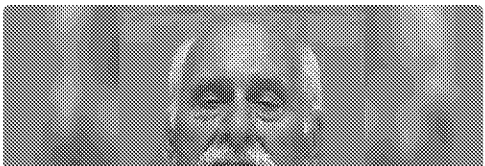
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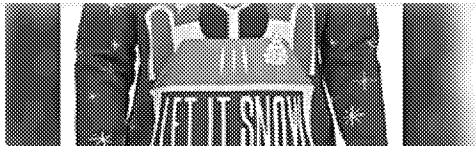
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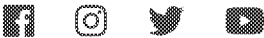


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Sierra Club intervenes in open records lawsuit against Texas Attorney General

The environmental group is trying to obtain documents showing how the Texas Commission on Environmental Quality arrived at a decision on increasing emissions limits for a toxic chemical.

BY KIAH COLLIER DEC. 18, 2019 14 HOURS AGO



Michael Honeycutt, director of the Texas Commission on Environmental Quality's toxicology division, also serves as chair of the Science Advisory Board at the U.S. Environmental Protection Agency. Sierra Club has requested Honeycutt's emails and other communications related to a controversial rule change. Texas Commission on Environmental Quality

The Sierra Club on Wednesday intervened in a lawsuit that the Texas Commission on Environmental Quality filed against the Texas Attorney General's Office in October over an open records ruling.

In July, weeks after the TCEQ proposed increasing the acceptable limit on air emissions of a toxic gas known as ethylene oxide, Earthjustice submitted an open records request to the commission on behalf of the Sierra Club for records related to how the commission went about devising the rule. Instead of releasing them, TCEQ requested a decision from the Attorney General's office, which ruled in favor of the environmental groups in September.

TCEQ asked the attorney general to reconsider its opinion and sued the office on Oct. 4, arguing that it didn't have to release the documents under a provision of state law that can allow public entities to withhold records related to internal policy deliberations. The lawsuit is still pending.

Neil Carman, clean air director for the Lone Star Chapter of the Sierra Club, said the group decided to intervene because "it's the only way to ensure that we get access to the TCEQ's ethylene oxide documents."

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He said TCEQ's decision to sue the attorney general suggests the agency is "hiding significant details." And he noted that the open records request covered communications to and from TCEQ's chief toxicologist Michael Honeycutt, who also chairs the Science Advisory Board of the U.S. Environmental Protection Agency, which is pursuing a similar rule to relax restrictions on ethylene oxide emissions.

Spokespeople for the TCEQ and Attorney General's office didn't immediately respond to requests for comment.

Media lawyer Joseph Larsen, a member of the Freedom of Information Foundation of Texas, said state law dictates that the only way governmental entities can avoid complying with an Attorney General's open records ruling is to sue the office.

While "this causes what one might think of as a conflict of interest" because the attorney general typically represents TCEQ in legal proceedings, he said "they build a 'Chinese wall' to restrict the transmission of information between the two branches of the AG involved in the litigation."

And Larsen said governmental entities frequently sue the attorney general.

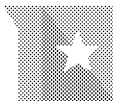
"Where the AG orders release of potentially contentious information like that at issue here, it is almost sure to happen," he said.

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Texas regulators want stiffer penalties for company whose Port Neches plant exploded

In a surprising vote, the Texas Commission on Environmental Quality rejected a staff-proposed penalty against TPC Group's Port Neches chemical plant — which was rocked by explosions last month — for a slew of 2018 pollution violations and asked that they be referred to the Texas Attorney General's Office.

BY KIAH COLLIER DEC. 18, 2019 17 HOURS AGO



A process tower flew through air after exploding last month at the TPC Group Petrochemical Plant in Port Neches. 
REUTERS/Erwin Seba

Environmental and watchdog groups have long criticized the Texas Commission on Environmental Quality for taking it too easy on polluters — and the TCEQ has often countered that its job is to coax industrial facilities into compliance rather than slap them with big fines.

But on Wednesday, agency officials openly acknowledged that a proposed fine against Texas Petroleum Chemicals Group, known as TPC — the Houston-based company whose Port Neches chemical plant exploded last month — for more than a half-dozen unrelated violations that occurred in 2018 wasn't high

enough and that its general enforcement approach may not be stringent enough.

In a unanimous vote, the agency's three commissioners rejected a fine against TPC that had been whittled down to \$22,302 and kicked it back to agency staff, asking that the executive director refer the cases to the Texas Attorney General's Office for "comprehensive enforcement action" — a move that will presumably result in a more stringent penalty and could result in a criminal investigation.

The proposed fine covered eight separate violations the TCEQ found at TPC's Port Neches plant in 2018 that mostly involved preventable emissions of hazardous air pollutants, including thousands of pounds of highly explosive 1,3 butadiene.

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"When these violations occurred in 2018, I think the executive director calculated the penalty appropriately," Commissioner Emily Lindley said before the vote. "But we're here today and there have been recent events, and we have to take those events seriously."

The vote came after commissioners heard powerful testimony from Port Neches-area residents who described their experiences during the fire that broke out the day before Thanksgiving last month at the TPC plant, sparking two explosions and widespread mandatory evacuations.

Fred Vernon, 31, recalled abandoning yams and turkey in the kitchen and grabbing his 4-month-old daughter from her baby swing as his family hastily left the house. Shortly after they stepped outside, he said, the infant started vomiting even though they had thrown a blanket over her head. Vernon said he later started vomiting himself.

"The stories like that go on and on for families around southeast Texas," said Vernon, who was born and raised in Port Arthur and moved into a house 2.5 miles away from the TPC facility a year ago. "I speak for myself. I believe I speak for my community."

He and other residents and representatives from environmental and watchdog groups urged commissioners to pursue stiffer penalties against TPC, which has

a long history of environmental violations. They also urged the agency to consider overhauling its entire approach to environmental enforcement by expediting penalties and increasing a \$25,000-per-day violation cap, which the agency has applied even to near-miss events that could have resulted in major explosions. Environmental groups have long argued that the agency has the authority to penalize companies that amount for every pollutant released during an emissions event, which it seemingly never does.

Commissioner Bobby Janecka said he agreed that it generally takes the agency too long to penalize companies — some of the violations discussed Wednesday occurred almost two years ago — and noted that stakeholders familiar with the petrochemical industry had told him that "smaller events often precipitate a larger one."

Because of that, he said he was convinced that the state needed "to consider whether these [2018] violations had any potential causal change or suggested a pattern."

Even as he advocated for commission approval of the proposed fine, Vic McWherter — the agency's public interest counsel — said before the vote that he was "confident that those thoughts and observations about the penalty policy and statutory caps ... will be considered by everyone here going forward." He also thanked residents for traveling all the way to Austin to share their stories.

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Adrian Shelley, director of the Texas office of the nonprofit organization Public Citizen and a former executive director of Air Alliance Houston, said he was amazed by the commission's rejection of the proposed fine and its request to commission Executive Director Toby Baker to refer the cases to the Attorney General's Office.

"I'm really pleased," he said. "I have never seen ... them call an audible like that in the last moments. I would like to believe that it is indicative of a changing approach."

It's unclear whether Baker will send the case to Attorney General Ken Paxton. But in the wake of the TPC event, Baker issued a strongly worded statement

condemning what he described as "an unacceptable trend of significant incidents impacting the Gulf Coast region."

"While not all emergency events may be prevented, it is imperative that industry be accountable and held to the highest standard of compliance to ensure the safety of the state's citizens and the protection of the environment," he said.

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Although evacuation orders have been lifted, local and state agencies are still overseeing cleanup and repairs at the chemical plant. An update Wednesday said, "Response efforts are focused on activities to secure site equipment and minimize impact to environment, while preserving the safety of emergency responders and the community."

Wednesday's commission vote came the same day that Environment Texas' Research and Policy Center released its annual report of unauthorized air pollution in the state, which is based on an analysis of state enforcement data and reports that industrial facilities must file with the state when they emit more air pollution than allowed under their government-issue air permits.

It found that TCEQ fined only 57 so-called "emissions events" last year, some of which occurred before 2018. That's compared with the 4,590 emissions events that occurred throughout the year.

It also found that TPC's Port Neches facility was the second-highest unauthorized emitter of butadiene in the state, having spewed 14,881 pounds of the cancer-causing gas beyond its permit limits.

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“Texans are sick and tired of oil refineries and petrochemical plants catching fire, exploding, and pumping out harmful pollution,” Catherine Fraser, a clean air associate with the research center, said in a statement. “We need our state leaders to crack down on illegal pollution, and stop putting the interests of polluters over the rest of us.”

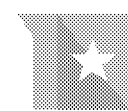
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The Marshall Democrat-News

Magellan Pipeline closure creates possibility of increased truck transport of anhydrous ammonia along Highway 65 and Interstate 70 through Saline County

Wednesday, December 18, 2019

by Lee Jasper/Staff Writer

Getting fertilizer to the field is critical for the continued production of our nation's food and fuel. Environmentally sound and safe transport of fertilizers is necessary to support continuing demands for our nation's and the world's growing population.

Ammonia is the cheapest and most sure source of nitrogen in fertilizers. Anhydrous ammonia makes American farmers the most productive in the world and remains the primary ingredient in most fertilizers essential to the nation's agricultural system.

While most of the ammonia shipped in the nation is shipped by rail, the Magellan ammonia pipeline was built in 1968, a 1,100-mile pipeline system, the world's first common carrier ammonia transport system. According to an impact statement published by Fertecon Agribusiness Intelligence, the pipeline's western leg originates in Borger, Texas, and runs north to Partridge, Kan., where it intersects with the eastern leg of the pipeline system. From the Partridge location the pipeline runs north into Nebraska and on to Garner, Iowa, a major ammonia hub which serves the Midwest Cornbelt. After leaving Garner, the pipeline turns northwest, finally ending in Mankato, Minn.

The pipeline has had an annual capacity of 900,000 tons per year, most of which, according to the impact statement, is produced in Texas and Oklahoma and delivered via the pipeline to the Midwest.

According to the impact statement and other online sites, Magellan has seen profitability issues in recent years, including a fatal incident due to a pipeline leak in 2016, which put the pipeline under increased observation by "environmental agencies as well as occupational safety organizations." Other incidents over the past years have included violations associated with a May 2005 pipeline release in Kansas, and hydrostatic testing rendering the pipeline unavailable for shipments for much of 2010. Reports of and the resulting declining revenues resulted in the operation of the pipeline. A final decision to shut down the pipeline was announced in January 2018, and put into effect late this year.

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pipeline in September of this year. It is expected to continue on the northern end of the pipeline in March 2020, when current contracts with customers will end.

Without the pipeline in place for ammonia transport, producers will have to rely on other transportation venues. Shipping will move mostly to truck, but will also include rail and barge transport of ammonia. If alternative shipping raises the cost of anhydrous ammonia, that cost will be passed on to American farmers and according to IFCA, freight rates for some carriers have increased in recent years by as much as 400 percent.

According to Illinois Fertilizer and Chemical Associates and The Fertilizer Institute of Washington, D.C., rail transportation continues to be the safest means to ship chemicals such as anhydrous ammonia and remains the majority shipper of anhydrous ammonia. One rail car transports as much as four tank truckloads of the chemical. The railroads, however, have asked to be "relieved of their common carrier obligation" or to be protected by a "liability gap," according to IFCA reports. Rail carriers argue the "risk associated with the transportation of toxic-by-inhalation chemicals is too great for them to carry." If the railroad request is granted, the majority of ammonia transport will shift from rail to truck, thus increasing the volume of hazardous materials on the nation's highways.

Another impact of the shift will be the stress on trucking companies, which have for several years, faced a shortage of qualified drivers and industry infrastructure to meet increasing demands.

Concern for transport safety of the very toxic-by-inhalation anhydrous ammonia that will no longer be shipped by the Magellan pipeline has sparked some concern across the Midwest, including Saline County.

The quarterly meeting of the Saline County Local Emergency Planning Committee, held Wednesday, Dec. 11, at the Marshall Municipal Airport included a presentation by an EPA District 7 representative relative to emergency responses in the event of a spill or incident involving anhydrous ammonia and programs available through the Environmental Protection Agency to assist Saline County in the planning for such possibilities. Local officials are in the process of review and planning due to the projected increase in chemical transport through Saline County on Highway 65 and Interstate 70 during and after the closure period for the Magellan pipeline.

Questions, comments and concerns can be directed to Saline County Local Emergency Planning Committee by appointment at the local office at 153 S. Odell Ave., Marshall, by phone at 660-236-1955 or by visiting LEPC Saline County online.

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<https://www.chron.com/business/energy/article/Fight-over-Flaring-Industry-enviros-contrasting-14913506.php>

Industry, enviros contrasting accounts over flaring

By Sergio Chapa Updated 6:54 am CST, Wednesday, December 18, 2019



Environmentalists and the natural gas industry have issued contrasting accounts about flaring, the practice of burning off excess natural gas in the Permian Basin and other shale plays across the United States.

Environmentalists and the natural gas industry have issued contrasting accounts about flaring, the practice of burning off excess natural gas in the Permian Basin and other shale plays across the United States.

Over the past week, the Washington, D.C.-based environmental group Earthworks and the industry-funded group Texans For Natural Gas released online statements that offer contrasting viewpoints of the issue.

In a public letter, Earthworks criticized the Texas Commission on Environmental Quality, the state's top environmental agency, as being lax on enforcement and "uncooperative" in response to citizen complaints about the issue.

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Texans For Natural Gas posted a Tuesday morning report stating that methane emissions intensity, the amount of methane vented or flared for each barrel of oil equivalent produced, has fallen in the United States over the past seven years and remains at rates far below other nations such as Russia.

Flaring Under Fire: Pipeline operator sues Railroad Commission

With natural gas viewed as a byproduct of drilling for much more valuable oil, companies that don't have their wells connected to natural gas pipelines can receive permits to either release it into the atmosphere in practice known as venting or burn it off on site in another practice known as flaring.

Oil companies vented or flared a record 1.28 billion cubic of natural gas per day during 2018, a recent report from the Energy Information Administration shows. At the current market prices, that's roughly \$1 billion worth of natural gas burned off or wasted per year.

Texas oil wells accounted for 51 percent of the flaring and venting activity while oil wells in North Dakota accounted to 31 percent. Venting and flared natural gas increased to 1.25 percent of overall U.S. production from 0.84 percent reported in 2017.

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In its public letter, Earthworks criticized TCEQ for failing to follow up on citizen complaints regarding flaring and venting in the Permian Basin and elsewhere across the state. The environmental group vowed to step up its pressure on the agency and that it would be attaching more videos and scientific information with future complaints.

Working with two partner organizations, the report released by Texans For Natural Gas went nation by nation comparing the amounts of natural gas vented or flared compared to crude oil production. Smaller nations with considerably smaller crude oil production such as Syria, Yemen and Mozambique had the worst rates.

Venezuela, where crude oil production has fallen amid strict U.S. sanctions to oust strongman Nicolas Maduro, ranked in 11th place for methane emissions intensity while Russia ranked in 35th place and the United States in 44th place.

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ARMY CORPS

Judge finds government liable for Harvey flooding

Ariel Wittenberg, E&E News reporter • Published: Wednesday, December 18, 2019



Flooded homes are seen after Hurricane Harvey. Staff Sgt. Daniel J. Martinez/South Carolina National Guard/Flickr

The federal government is liable for flooding of some homes during Hurricane Harvey, a U.S. Court of Federal Claims judge ruled yesterday.

The case highlights the Army Corps of Engineers' struggle to respond to increasingly intense and frequent storms.

At issue in this case is damage that occurred to homes upstream of the Addicks and Barker reservoirs in Texas, which are owned and operated by the Army Corps of Engineers and consist of U-shaped embankments meant to prevent downstream flooding in Houston.

When the reservoirs were designed in the 1940s, the government bought some land upstream of the dams to hold water. The Army Corps calculated how much land to buy based on rainfall from intense storms in 1935 that the agency did not expect to occur more than once in the lifetime of the reservoirs. But the dams were designed to hold much more water, with the corps deciding at the time that it was unnecessary and cost-prohibitive to buy all the necessary land that could flood, much of which was used for agriculture at the time.

In later years, the Army Corps decided against finishing outlet canals meant to drain the reservoir due to concerns about flooding downstream, which increased the reservoirs' size. In the 1970s and early 1980s, the areas upstream of the reservoirs began to rapidly urbanize, leading the corps to realize it could eventually have to flood homes upstream from the reservoirs.

When Hurricane Harvey dropped its record 43 inches of rain on the Houston area in August 2017, the Barker and Addicks reservoirs helped prevent an estimated \$7 billion in losses downstream, but the resulting flood pools within the reservoirs broke records and went far beyond the federally owned land.

The history of the reservoirs helped convince Senior Judge Charles Lettow, who wrote in his ruling that "the flooding that occurred was the direct result of calculated planning."

"Here, the evidence demonstrates that the corps was aware or should have been aware since the initial construction of the dams and at every point onward, that the flood pools in the Addicks and Barker Reservoirs would at some point (and thereafter) exceed the government-owned land, inundating private properties," he wrote.

The ruling is part of a test case brought by 13 property owners. Lettow's finding means hundreds more upstream property owners who were also flooded during the storm are now eligible to seek certification as a class and ask for damages.

During a 10-day trial in Houston, which included a court visit to the dams and seven properties, the government argued that it couldn't be held liable for flooding land located in a county that has always been at

risk of inundation during storms, and that Hurricane Harvey was a record-breaking event.

But that argument didn't hold water with Lettow.

"That plaintiffs' properties may be susceptible to flooding during extreme weather events is of some relevance, but it is independent from the fact that plaintiffs' properties are privately-owned land within a reservoir that only flooded in this case because of the government's construction of the Addicks and Barker Dams," he wrote. "Even if this geographical area is generally susceptible to flooding during extreme weather events, the character of the plaintiffs' land would not be *especially* susceptible to flooding without the construction of the dams."

The government also argued that its actions had only temporary consequences because the flooding lasted for only a few days. But the court found that was an unreasonable way to measure the risk. Instead, Lettow said, the "time and duration" of the government's actions should be measured by the fact that it has a permanent ability to flood properties upstream of the reservoirs.

Justice Department spokesman Wyn Hornbuckle said the government is reviewing the ruling.

The case could have broad implications for the Army Corps, which owns myriad flood control structures across the country, said Doug Lamont, who previously oversaw project planning and review for the Army Corps and served as the temporary head of the agency during the beginning of the Trump administration.

Lamont, who now works at Washington, D.C.-based consulting firm Dawson & Associates, noted that the Addicks and Barker reservoirs weren't designed to handle such an extreme event as Hurricane Harvey, forcing the Army Corps to choose between flooding upstream or downstream communities.

That kind of choice, he said, could become more common, as much of the federal government's flood control infrastructure was designed more than half a century ago, and climate change is expected to fuel more frequent and powerful storms.

"Typically, in the past, dams and reservoirs were designed based on historical floods," he said. "The quandary we are all in now is, does each extreme event set a new marker relative to new dams that must be raised or infrastructure that must be strengthened?"

Lamont noted that the Army Corps was faced with similar predicaments of when to hold water back and when to release it all along the Mississippi and Missouri rivers last winter and spring as flooding inundated much of the Midwest. While the Army Corps is charged with managing much of the nation's flood control infrastructure, Lamont said it will be up to Congress to empower any necessary reviews or updates.

"We are experiencing more and more extreme weather events with significantly more precipitation," he said. "These systems can easily be overwhelmed by those events."

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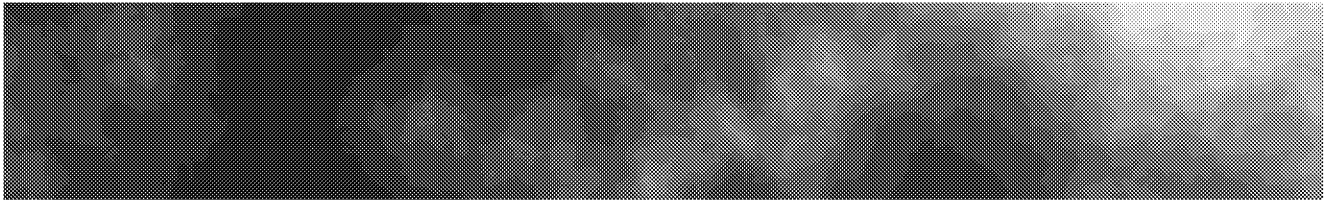


ENERGY & ENVIRONMENT

Harris County To Get \$1M Grant For Air Monitors

The American Chemistry Council Foundation and the East Harris County Manufacturers Association are providing a grant, in response to last March's ITC chemical fire.

ANDREW SCHNEIDER | DECEMBER 18, 2019, 7:00 AM



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Florian Martin/Houston Public Media

The fire has caused a massive smoke cloud that can be seen from the ITC facility in Pasadena.

00:00 / 00:47

A \$1 million grant is coming to Harris County for air quality monitors and training. The grant is part of the petrochemical industry's response to the ITC plant fire in Deer Park earlier this year.

Back in March, the ITC chemical fire spewed smoke and chemical runoff for days. The American Chemistry Council Foundation and the Harris County Manufacturers Association are providing the funds with no required match by the county.

County Commissioner Adrian Garcia called the grant "historic."

"For so many years, there's been a conversation that protecting our environment and protecting our industry have been mutually exclusive other," Garcia said. "This is just a demonstration that it's not, that we can both work together, work towards the same goals."

The monitors will go into Precinct 2 where much of Harris County's petrochemical industry stands. Garcia said he hoped the industry's response would serve as a model it could use in dealing with communities elsewhere in Texas and around the country.

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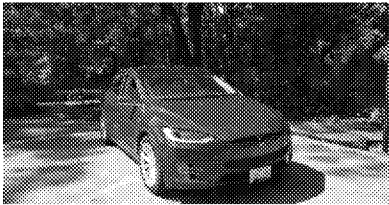
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Federal Judge Rules Army Corps Of Engineers Responsible For Hurricane Harvey Damages

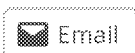
The Army Corps opened the dams at Addicks and Barker reservoirs to prevent more flooding in downtown Houston. But that flooded thousands of homes in nearby neighborhoods.

**Federal Judge Rules Army Corps Of
Engineers Responsible For Hurricane Harvey
Damages**

December 18, 2019



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By Rhonda Fanning | December 18,

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Jorge Sanhueza-Lyon/KUT

The Addicks reservoir crested after flooding from Hurricane Harvey. The Army Corps of Engineers decided to open its dam, which sent a deluge into nearby residential areas.

Houston-area homeowners and business owners scored a win Tuesday after a U.S. Court of Federal Claims judge ruled that the U.S. Army Corps of Engineers is responsible for losses they incurred after Hurricane Harvey.

Gabrielle Banks covers federal courts for the Houston Chronicle. She says dams built decades ago, at Addicks and Barker reservoirs, didn't prevent flooding in some of Houston's outlying neighborhoods. In fact, the Corps of Engineers decided to open those dams to prevent flooding further downstream in downtown Houston. Banks says this recent lawsuit is one of two related to Harvey flooding.

"[It] relates to the people upstream of those two dams," she says. They argued successfully that the flooding on their land was preventable and



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control. This recent court decision means that, most likely, they'll get money to compensate for the damages.

Banks says the government argued a strong case against taking responsibility, calling Hurricane Harvey a "once-in-a-lifetime, unprecedented event."

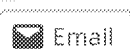
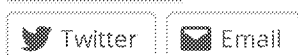
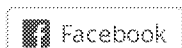
The second lawsuit, which is pending, involves homeowners downstream of the dams.

Banks says these lawsuits are a "cautionary tale" of allowing development in a flood plain.

"If you look back at the history, there were a series of moments and documents that warned officials that this was coming, that this was dangerous, that this needed to be prevented," Banks says. "And one by one, over decades, decisions were made to allow development to happen."

Written by Caroline Covington.

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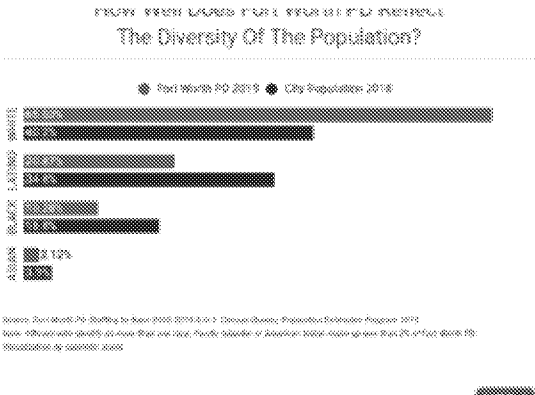


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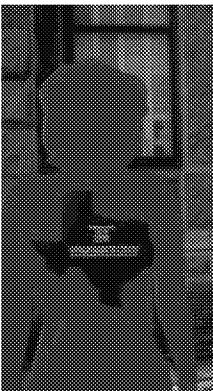
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The Guardian



Revealed: Denka lobbied to undermine science behind 'likely' cancer-causing toxin

Chemical manufacturer launched aggressive campaign instead of reining in pollution, according to documents

Emily Holden in Washington and **Oliver Laughland** in New Orleans

Thu 19 Dec 2019 05.00 EST

Facing public pressure to rein in its pollution, a Japanese chemical manufacturer has instead launched an aggressive, years-long campaign to undermine the science showing that its compounds could cause cancer, according to newly released documents reviewed by the Guardian.

Chloroprene, the primary constituent of the synthetic rubber neoprene, is the major air pollutant in the town of Reserve, Louisiana, an area which according to the Environment Protection Agency (EPA) has the highest risk of cancer due to airborne toxins anywhere in the US.

The town, and the chemicals plant operated by Denka Performance Elastomer, is the subject of a year-long Guardian reporting project, Cancer Town.

Robert Taylor, director of the Concerned Citizens of St John – the community group leading the fight for clean air in the town – said a reversal of the EPA classification would be “devastating” for his fellow residents.

“I think it’s very audacious of them to challenge all of this work that the government has done. To me it’s indicative of how callous these people are and how they really just don’t care about the people here,” Taylor, who has numerous relatives that have died of cancer he blames on the plant, said. “If they are successful it would leave us at the mercy of this plant.”

In 2010, the EPA concluded an extensive, independent, peer-reviewed assessment of chloroprene which found that the compound was “likely to be carcinogenic to humans”. The federal government has recommended a maximum level of chloroprene humans should inhale over a lifetime as 0.2 micrograms a cubic metre. The agency, however, doesn’t enforce its guidelines.

For years Denka has been quietly fighting to discount the underlying science that proves chloroprene is a dangerous carcinogen even in low amounts. Denka argues that lifetime chloroprene exposure levels could be 156 times higher than what the EPA has determined and that the plant shouldn’t be considered a likely carcinogen.

A series of documents, shared with the Guardian and released to lawyers for Reserve residents under the Freedom of Information Act (FOIA), shows the company and its contractors have pursued EPA scientists and pushed them to accept their own new modeling, which Denka has offered multiple new peer-reviewed studies to try to bolster.

Emails show EPA officials resisting Denka’s efforts.

A spokesman for Denka said the company is “dedicated to sound science” and stated it has “worked collaboratively with EPA to seek EPA’s reconsideration of the faulty science” underlying the 2010 classification.

The plant, named the Pontchartrain Works facility, was built by the US chemicals giant DuPont in the mid-1960s, and began producing neoprene in 1968. DuPont sold the facility to Denka in 2015, shortly before the EPA found that a census tract next door to the plant had a cancer risk rate 50 times the national average.

Denka’s campaign began shortly after Donald Trump won election and just days before he took office, with an “urgent” memo to the presidential transition team on 17 January 2017, accusing EPA of “using faulty and highly inflated risk data”.

The company said the EPA’s findings about the dangers of chloroprene would hurt its bottom line, according to another set of public records obtained by the Sierra Club under the FOIA.

“These studies will result in unwarranted compliance costs that pose a direct threat to [Denka’s] ability to keep its facility open and to keep jobs in Louisiana,” Denka said.

A Denka spokesman pointed to the \$35m spent by the company to install emissions controls in recent years. The company said these installations have reduced chloroprene emissions by 86%, but it has been challenged on this claim by the Louisiana department of environmental quality (LDEQ). The plant continues to emit chloroprene above the 0.2 EPA guideline, according to the agency.

Emails show lawyers working for Denka repeatedly seeking meetings with top EPA officials throughout 2017. In September 2017, Ramboll Environ, Denka's consultants, testified at a Republican-run House hearing to criticize the chloroprene review as bad science.

Denka's crusade continued through 2019, new records reviewed by the Guardian show. Ken McQueen, EPA's regional administrator over Louisiana, met with the company as recently as 30 October.

A Denka spokesman said the purpose of this meeting was "to introduce plant management and executives" to EPA officials and that meeting included a short update on Denka's request for reconsideration of the agency's chloroprene findings.

Emails earlier this year show EPA officials repeatedly pushing back on Denka's campaign, arguing that the new studies Denka presented weren't enough and that the full model would have to undergo internal peer review at the agency.

The EPA has since paused its reconsideration of chloroprene until that peer review is complete, the agency confirmed by providing the Guardian with a letter written from the air quality planning director, Peter Tsirigotis, to Louisiana's environment secretary, Chuck Carr Brown, on 23 September.

Tsirigotis noted that EPA's chloroprene review is not an air quality standard and is not used directly to regulate plants.

"Risk is one factor that we need to consider, along with information on costs, energy, safety, control technologies and other relevant factors," Tsirigotis said.

. . .

Emails show the EPA's Tina Bahadori, who was at the time director of the National Center for Environmental Assessment, insisting that Denka's model be further analyzed by the agency.

On 6 June, she explained that Denka's physiologically-based pharmacokinetic, or PBPK model - must pass peer review before it could factor into any of EPA's decisions. A PBPK model is a technique for predicting how a human or animal will absorb and metabolize a chemical.

"I want to emphasize ... the focus of this engagement is on the model and its acceptability in the context of this request for reconsideration," Bahadori told Harvey Clewell, the principal consultant at Ramboll Environ. "We are not having a discussion about the risk calculations."

Clewell - who has also conducted tobacco industry-funded studies with his models - pushed back in two more emails, asking if protocol had changed.

"No, nothing has changed," Bahadori said.

Clewell declined to answer specific questions from the Guardian, citing "client confidentiality", but stated that company's work for Denka "meets the highest scientific, professional and ethical standard".

"We are confident that the ongoing EPA quality assurance review and upcoming EPA peer review of the chloroprene PBPK model will find our methodology and conclusions to be scientifically

valid, he said on behalf of the company.

A Denka spokesman said the company believes "a robust and thorough peer review process is the best way to reach a sound scientific consensus".

Experts who have reviewed the situation say that if Denka is successful in its appeal, it could have license to release even more chloroprene into the air in Reserve, avoiding possible future regulations. Denka is already facing a civil suit in the state courts involving dozens of local plaintiffs under nuisance abatement laws.

The decision on chloroprene could also set a precedent for other chemical manufacturers to seek reviews to the science that has deemed their products unsafe.

Penny Fenner-Crisp, the former deputy director and senior advisor for EPA's pesticide program who is now retired, said the type of model Denka is backing is also under discussion in evaluations of two industrial solvents that make people ill, methylene chloride and NMP.

"It's a big deal. I think it's an appropriate big deal because it is providing a tool to better understand at least partially the similarities and differences between the test animals and people," Fenner-Crisp said.

But Sonya Lunder, a senior toxics adviser Sierra Club, said Denka's fight for lax guidance on chloroprene fits a broader trend of industry trying to delay, complicate and control the regulatory process.

"I think industry knows that these numbers have an incredibly powerful impact, or can, on downstream regulation," she said.

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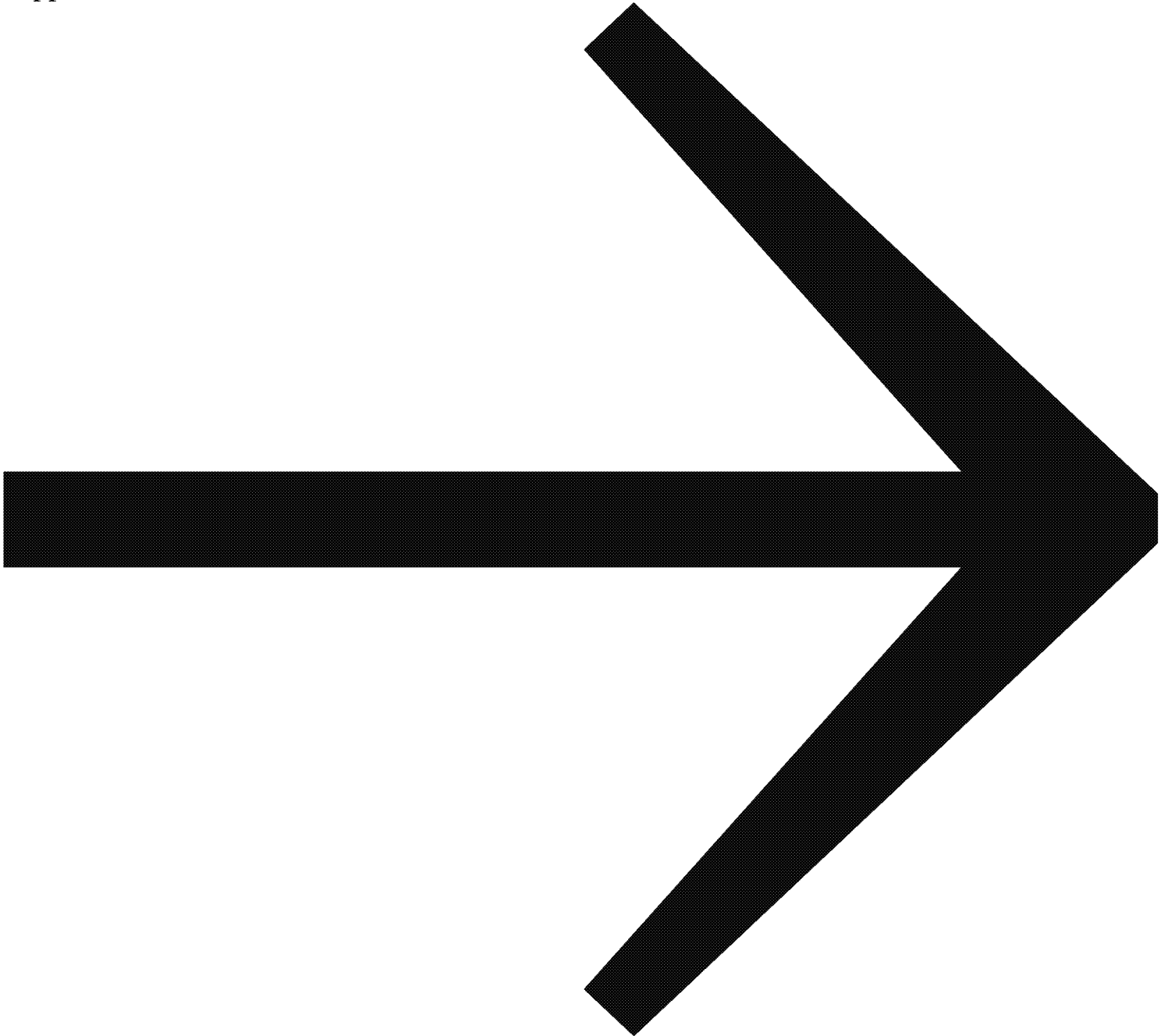
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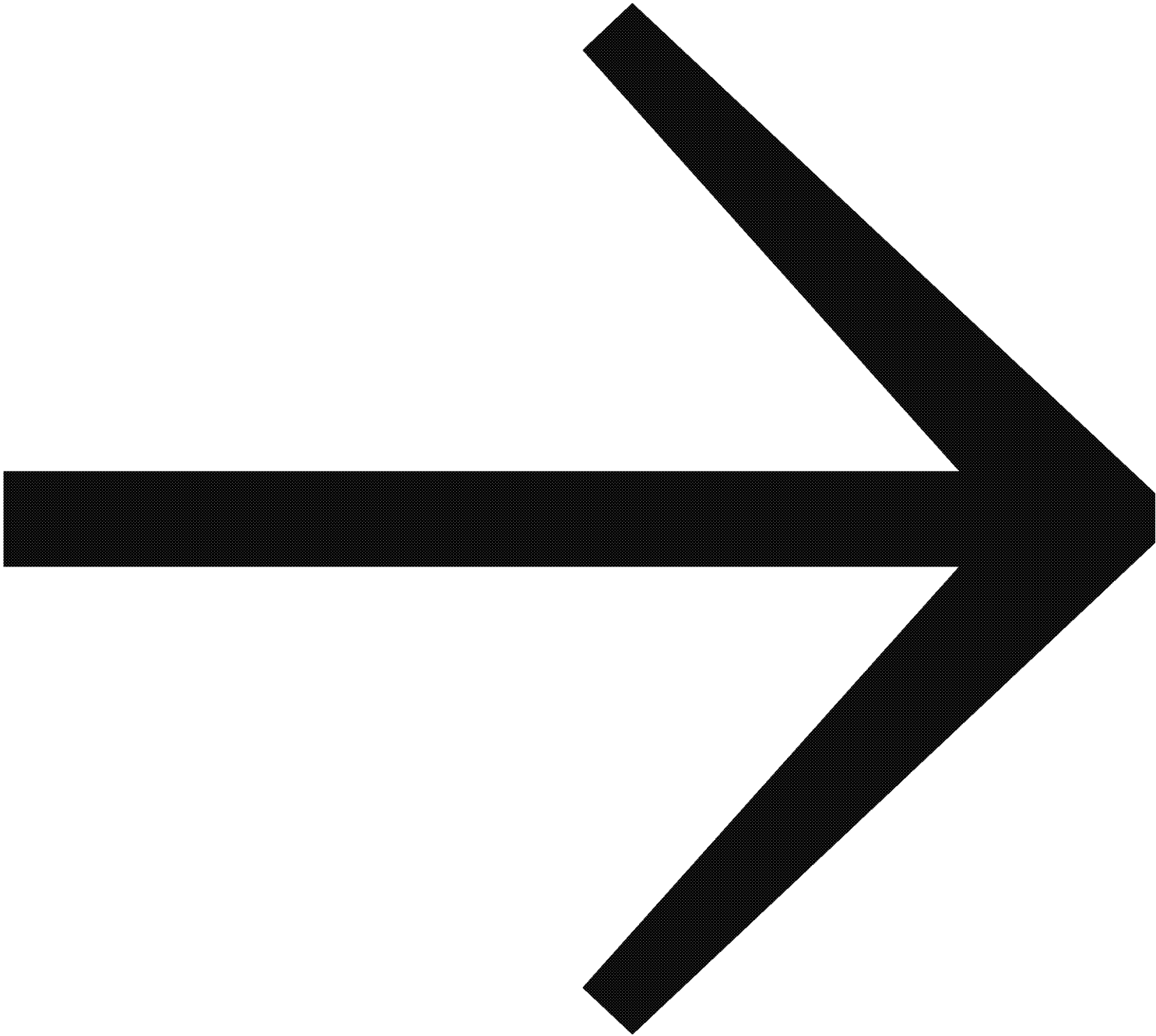
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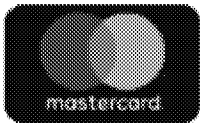
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Department Of Energy And NMED Hold Meeting On FY 2020 Consent Order Milestones



A large crowd that included state and local elected officials as well as representatives of anti-nuclear groups attended Monday's Department of Energy and New Mexico Environment Department on Consent Order Milestones for FY2020. Photo by Maire O'Neill/losalamosreporter.com



DOE Environmental Management Los Alamos Field Office Manager Doug Hintze, LANL Permitting Manager for NMED Neelam Dhawan, and Stephanie Stringer, NMED Resource Protection Division Director answer questions during Monday evening's meeting at Fuller Lodge. Photo by Maire O'Neill/losalamosreporter.com

BY MAIRE O'NEILL

maire@losalamosreporter.com

New Mexico Environment Department (NMED) will hold a meeting Jan. 9, 2020, on the 2016 Compliance Order on Consent in order to fully understand what the issues are with the document. Stephanie Stringer Resource Protection Division Director said NMED wants to know what is working, what is perceived to not be working, what isn't working for the various parties.

Stringer made the announcement at a meeting held by DOE and NMED to discuss the FY2020 meeting Monday, Dec. 16 in Los Alamos.

Stringer said the information gathered at the January meeting will help NMED make an informed decision for the next step, whether it's continue on with the Consent Order or think about other options that might be on the table.

"Rather than just hearing that the 2016 Consent Order has issues, we want to fully grasp and understand what those issues are to make that informed decision for the path forward under this administration," she said.

At the outset Stringer gave an overview how the Consent Order works for revisions to the milestones, targets and cleanup campaigns based on factors such as actual work progress as a result of changing conditions, risk and funding. Those fiscal year milestones and targets are finalized after DOE receives its fiscal year appropriation so that they can figure out what they can do based on funding. A public meeting is held to discuss the work progress, the facilities change conditions and funding levels, Stringer said.

“During each planning process the DOE is required to provide us with an estimated date as to when all work in the Consent Order will be completed. It is my understanding that the date did not change with this year’s update and will remain 2036 for the final completion date,” she said.

Stringer described the process that was gone through to get to the point of the milestones meeting which included three meetings to discuss the update to Appendix B of the Consent Order. She said although it is not a negotiating process, NMED and DOE have the opportunity to share their thoughts and see if they can be incorporated into the next year’s milestones. The final Appendix B was submitted on Nov. 7.

For federal FY 2019, 17 of the milestones were completed as planned, Stringer said. She noted that NMED granted extension for two milestones meaning that they are no longer considered milestones. If appropriate she said they will become new milestones for the next fiscal year.

On another milestone, the extension request was denied and \$58,000 in penalties was assessed.

“We’re trying to be very thoughtful and fair in our regulatory oversight and hold LANL accountable for their responsibilities,” Stringer said.

She said the milestones don’t spell out all of the activities that are ongoing at the NMED Hazardous Waste Bureau relating to LANL’s projects; that there are 71 other documents that were completed and reviewed by the HWB including things like monthly notifications of groundwater daily reviews, monitoring reports and certifications of completion for various activities.

“While it sounds nice and packaged when we have 20 milestones, there’s so much more going on that’s not reflected in the summary numbers that we provide,” Stringer said.

Seventeen milestones were selected for FY 2020, eight of which were based on FY 2019 targets along with two modified milestones and seven new milestones.

The Chromium Interim Measure and Characterization Campaign takes up six of those milestones and the RDX Characterization Campaign has two milestones. Supplemental Investigation Reports make up two milestones and the Technical Area 21 D&D and Cleanup Campaign accounts for one more. The Southern External Boundaries Campaign has three milestones for Chaquehui Canyon, South Ancho Canyon and Lower Water/Indio Canyon Aggregate Area Reports.

The last three milestones are for Material Disposal Areas Remedies Campaign, multi campaigns and a reconfiguration completion report for Well R-31.

DOE Environmental Management Los Alamos Field Office Manager Doug Hintze, speaking after Stringer, said in addition to the Consent Order, EM-LA had the Hazardous Waste Permit, the Individual Permit. He said EM-LA has a lot of things they do work on.

“One of the things they need to do is show the big picture of how all of these activities align and relate together. It’s difficult when we just come here and talk about these 10-20 milestones in the Consent Order,” he said.

He noted several accomplishments of the EM-LA program during FY 2019 including 16 shipments of waste to the Waste Isolation Pilot Plant in Carlsbad and added that the program needs to send 700 shipments from LANL.

Hintze addressed Milestone #14, the Westbay Wells Reconfiguration Report saying EM-LA learned a lot from it. He said there were seven old wells to reconfigure and they were all put in one milestone. Two of them were in bad condition and were disintegrating and so far beyond the expectations, they were kind of put aside. He said the other five wells were not finished until 30 days after the due date leading to the \$2,000 a day fine from NMED. The five wells were finished within the additional 30 days and the reports provided to NMED, Hintze said.

Later in the meeting Scott Kovac of Nuclear Watch New Mexico asked if the \$58,000 fine had been paid to NMED yet and if so, what fund it had come out of – the cleanup fund or the Department of Justice Fund.

“We tried to determine who was responsible and in this case N3B stepped up and as the contractor and they are paying that fine and it’s coming out of their pocket. It is not paid from the appropriated funds. That’s not the case for all of them but it is the case in this one,” Hintze said.

The other two remaining wells were moved into FY2020 and Hintze said EM-LA is still trying to figure out their reconfiguration.

The last milestone deals with the Aggregate Area Known Cleanup Sites Campaign solid waste management units (SWMUs) which are areas that are dug up and investigated to see if some sort of needs to be done on them. Based on the history and all the available information on one of the sites, Hintze said they were expecting to get 386 cubic yards and it turned out to be more than 1,300 cubic yards which meant that the date had to be extended because of the amount of waste they actually had at that site.

Hintze briefly addressed PFAS (per- and polyfluoroalkyl substances) that have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s. He said PFAS are in Teflon for cookware and chemicals for firefighting and more.

“The country is still trying to address the standards. What we have seen in our results so far at LANL are about one-tenth of what the screening level is right now,” he said.

Hintze noted that two shipments of waste a week are being sent out from LANL. He said what EM-LA wants to do is send out three or four shipments not only of the EM portion but also the National Nuclear Security Administration new generation waste which is waste generated after 1999.

“We to make sure we have optimum loads going down to WIPP. A shipment is three Tru-Pacs which can hold 42 drums. You are limited by weight and by how much fissile material is in there. Right now we’re shipping drums that have been grouted so they are very heavy and a shipment is limited to 25.8 drums. Combining with the NNSA to get the full 42 drums sent with each shipment.

“This benefits everyone because if the shipments are not full, you have to use dummy drums, empty drums to take up space, not only in the shipment but when they’re down there at WIPP,” Hintze said.

During public comment, Nuclear Watch New Mexico executive director Jay Coghlan said DOE is making the claim that cleanup is more than half complete at Los Alamos. He asked Stringer what NMED’s position is on DOE’s claim. Stringer said she could not answer that question as far as percentage goes but that the regulatory components are being met.

Hintze responded that at the outset of cleanup, there were 2,100 sites and that more than half are completed bringing that number down to 950. He stressed that that's just the number of sites and not the volume of work.

"We're not trying to hide anything but that's exactly the statement and you're exactly right. There's some harder stuff that we have to clean up and sometimes you want to start with cleaning up the easier stuff so that you can learn and then apply it to some of the more difficult stuff," he said.

Coghlan said that three months after what he regards as the "the toothless 2016 Consent Order", three months after Hintze's office came out a lifecycle baseline cost with total costs for projected cleanup.

"But you also stated that 5,000 cubic meters of waste needs to be treated omitting the fact that there's something like 150,000 cubic meters in Area G. Your office indicated to Nuclear Watch that there would be a new baseline last January – where is that baseline estimate and when is it coming out," he said.

Hintze responded to Coghlan saying, "You're exactly right and I'm just thankful that you keep me honest. The amount of waste that we have to send by law down to WIPP is roughly 4,000 cubic meters of transuranic waste whereas the waste Coghlan is talking about will not go down to WIPP because it is not defined as transuranic," he said.

Hintze told Coghlan that EM-LA need a new baseline and that now N3B, the legacy waste cleanup contractor has one so EM-LA can go back and re-do that lifecycle cost estimate based on what they have in their contract. He expected that document to be submitted to DOE Headquarters for approval in March.

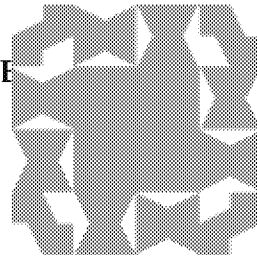
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Dangerous dry-cleaning chemicals leached into the soil and the aquifer under Española (<https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0604299>) decades ago. The Environmental Protection Agency (<https://www.epa.gov/>) pulled out recently after working on cleanup for 10 years, but some of the contamination remains. Now, the state's taking over, and ignoring investigators' recommendation to use a different cleanup method.

The EPA was using bioremediation—that's injecting vegetable oil into the ground to attract micro-organisms that break down the harmful chemicals. Reviewers looked at results mid-cleanup and said the vegetable oil method was not working in the deep parts of the plume. Their report says instead, the EPA should pump the groundwater out, clean it, and put it back.

Angelo Ortellì, New Mexico Environment Department (<https://www.env.nm.gov/>) project manager for the site, said he disagrees. "Well, we've seen success using the bioremediation that's been applied to this deep zone," he said. "Over the 10-year period, we've seen a 50 percent decrease in the concentration in three of the four monitoring wells that monitor that progress."

Ortellì said pumping the water out isn't viable in this area. The state plans to move forward next year with a new kind of vegetable oil he said should work better.

Dry-cleaning chemicals can cause cancers and birth defects. The toxins (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4970869/>) vaporize and come up out of the soil and into buildings. That's happening in Española, including at Las Cumbres Community Services (<https://www.lascumbres-nm.org/>), a spot for children and families. NMED said the chemical concentrations in the vapors found in Las Cumbres do not exceed EPA safety standards. Ortellì said they're keeping an eye on it.

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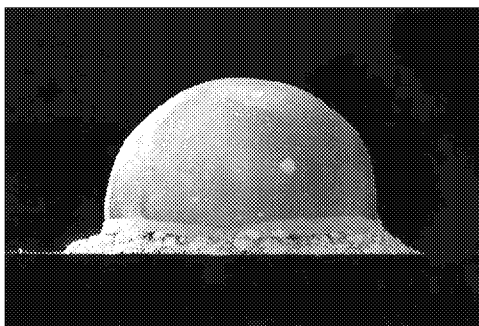
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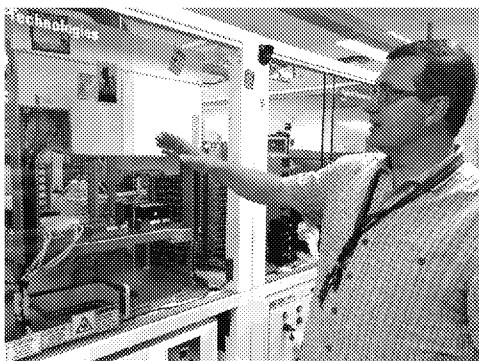
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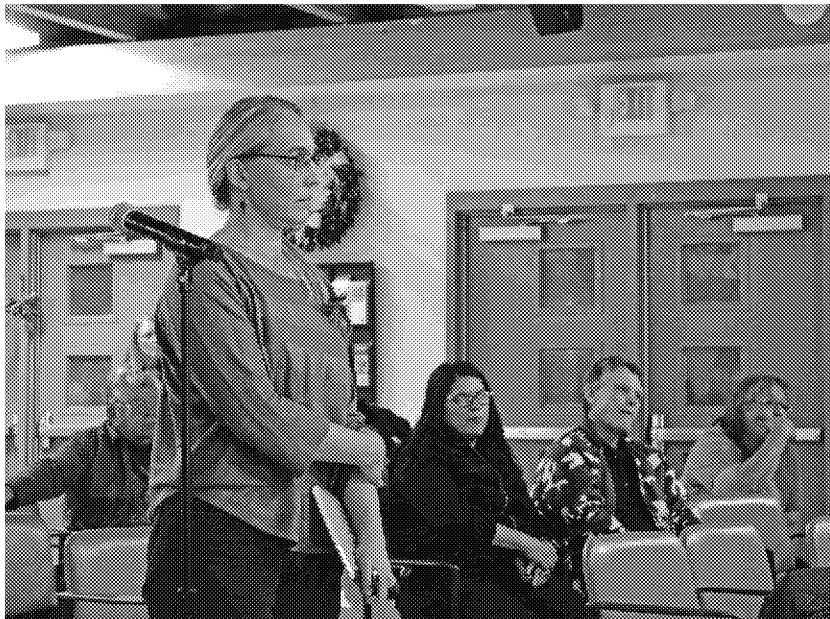
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University of New Mexico law student Mara Yarbrough is working to bring environmental justice to the community members of Española, New Mexico and ensuring the U.S. Environmental Protection Agency (EPA) is sticking to their primary goals of protecting human health and the environment.

Since giving a dissertation on the North Railroad Avenue Plume (NRAP) superfund site last year, Yarbrough said she realized there is a lack of communication and understanding between the people in Españ

By Amanda Britt/ @AmandaBritt_ / The Daily Lobo
(<https://www.dailylobo.com/staff/amanda-britt-amandabritt-the-daily-lobo>)
University of New Mexico law student, Mara Yarbrough, questions the
community involvement coordinator from the EPA, Edward Mekeel, during an
open meeting presented by the EPA in Españ
(<https://en.wiktionary.org/wiki/%C3%B1ola>), on Dec. 11, 2019. "Community turn
out was amazing," Yarbrough told the Daily Lobo. "I don't think a lot of
questions were answered properly by EPA or NMED, but the fact that these
questions and concerns are now out there means they need to be on their
radars."

(<https://en.wiktionary.org/wiki/%C3%B1>)ola and what the EPA is doing.

Yarbrough said while doing research for her dissertation, she would go to Española's public library, where information on the Superfund site is supposed to be held and available to the public. It was when she was doing this she identified a problem.

"I realized what's there has a lot of gaps, there are not many documents at all, including some of the key documents. They're not there," Yarbrough said.

NRAP is comparable to other superfund sites in New Mexico, including the Fruit Avenue Plume site in Albuquerque. At both sites, dry cleaners were the source of contamination when dry cleaning chemicals leaked into the soil in 1989.

At the Fruit Avenue Plume in Albuquerque, the initial remedy that was chosen for the site was a pump and treat method. The contaminated water was pumped out of the aquifer and treated for contamination before it was pumped back into the ground.

This is in contrast to the remedy chosen for the NRAP site — bioremediation. Bioremediation is the population growth of microbes already naturally existing in the aquifer to naturally treat the contamination.

Blake Atkins, EPA chief of Louisiana, New Mexico and Oklahoma Superfund Remediation, said several factors go into choosing a remedy for a Superfund site, including cost analysis, time to complete the remedy and how tight rock formations are in the aquifer.

"We piloted bioremediation just in a small area (of the Albuquerque plume) to see if it would be effective. We found that it was far more effective than the pump and treat, and so we pursued that," Atkins said. "And then we found bioremediation is being effective but the pump and treat...it was changing the chemistry of the water such that the bugs didn't want to consume contamination, so we just shut-off pump and treat altogether."

He said an analysis of the NRAP site in Españ (<https://en.wiktionary.org/wiki/%C3%B1>)ola also found the pump and treat method wouldn't be effective in the aquifer's deeper portions while bioremediation would have a more spread-out effect.

Yarbrough said it is important to remain in contact with the people of Españ (<https://en.wiktionary.org/wiki/%C3%B1>)ola and help them stay organized about their water.

"The next step is to intensify and focus these conversations with everyone involved, including the people at agencies that make decisions on how to go forward," Yarbrough said.

One such conversation occurred at the Beatrice V. Q. Martinez Senior Center in Españ (<https://en.wiktionary.org/wiki/%C3%B1>)ola.

The community members of Españ (<https://en.wiktionary.org/wiki/%C3%B1>)ola gathered on Wednesday, Dec. 11 to learn and voice concerns over contaminated groundwater underneath a portion of their city during a site status update meeting hosted by the EPA.

"(The) community turn out was amazing," Yarbrough said. "I don't think a lot of questions were answered properly by EPA or New Mexico Environment Department (NMED), but the fact that these questions and concerns are now out there means they need to be on their radars."

A previous meeting held by the EPA in 2015 regarding contamination had two community members, compared to last week's full room meeting.

The concerns of the Españ (<https://en.wiktionary.org/wiki/%C3%B1>)ola community surround the population's general health.

Before the meeting, attendees received handouts explaining the health effects of exposure to trichlorethylene (TCE) and perchloroethylene (PCE). An EPA toxicologist also attended to further provide insight on potential health risks and was primarily worried about the risks of the toxin to pregnant women and their fetuses.

Megan Delano, the chief director of Las Cumbres Community Services voiced concerns at the meeting that their facility was not offered mitigation efforts despite testing positive for PCE and vinyl chloride vapors for many years.

Diego Lopez, an Españ (https://en.wiktionary.org/wiki/%C3%B1)ola resident who was born and raised in the area, was concerned about the health risks to himself as well as his family and neighbors who have been potentially exposed to the toxins for decades.

The EPA recommends that no one in the area drink from private wells, but said it is a hard thing to regulate. Edward Mekeel, the community involvement coordinator from the EPA, said if people who have private wells want to get them tested, the EPA will work with the state to test their wells if it is within a reasonable distance of the contamination.

"I don't know if they're drinking it or not, it's something that's hard to do," Mekeel said. "We tried to get the word out that they shouldn't be doing that, and that's what we can do. But if they're concerned with their well water and want us to test it, we can do that."

In addition to the North Railroad Avenue Plume Superfund site, a second plume near the site was detected. Although the EPA has said that the source of the second plume has not been determined and is not currently thought to be connected to the first plume. The two are being considered the same site by the EPA currently.

Several questions remained unanswered from the meeting, including whether or not the plumes are connected to the same aquifer, or if there is a different source for the contaminant all together.

Looking into these investigations could take several months according to Clifford Villa, an Associate Law Professor at the University of New Mexico and former attorney for the EPA. He said the EPA has no limitation on the number of years they can work on a superfund site.

"I can say clearly that EPA has the authority to respond to the second source — there is no question about that, and the resources are there," Villa said. "It seems a logical process for EPA to continue to do that work."

The EPA officially transferred the financial responsibility (https://drive.google.com/file/d/0BwEqxMKfDdwRZ09sc3FEQ2xRUkk5Z0hSaIIXQjBreV9NVmZF/view) of the NRAP site from the federal government to the New Mexico state government in August. Previously the EPA covered 100% of funds associated with the remedy of the site, after the transfer of financial responsibility, the EPA covers 10% of operation and maintenance while the NMED takes on 90%.

Atkins estimates this cost to be about a couple hundred thousand dollars a year, he said in an interview with the *Daily Lobo*.

"We want the states to have some skin in the game as well, so they will take over the expense of operations and maintenance, which we anticipate will be a much smaller expense year to year to operate," Atkins said.

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by: Autumn Bracey
Posted: Dec 18, 2019 / 07:56 PM CST / Updated: Dec 18, 2019 / 07:56 PM CST

OTTAWA COUNTY OFFICIALS HAVE USED AN INTERACTIVE MAPS SYSTEM TO HELP DETECT LAND TOXINS.

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L.E.A.D Agency Director Rebecca Jim hopes this encourages parents to make sure their yard is clean and safe for their children and future generations.

“I think it will speed it up tremendously...Tremendously. If you are the last house on the block, the pressure should be on you to get your yard tested and make sure its clean.” said Jim.

The DEQ will be looking for feedback from the interactive map to make improvements in the future.

The L.E.A.D. agency encourages Ottawa County residents to get their yards tested for free if they haven't already.

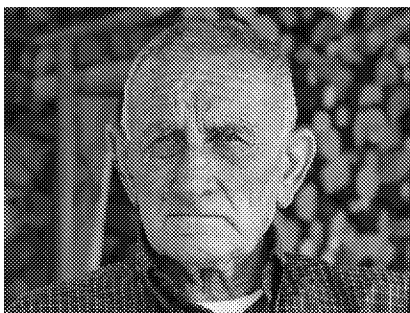
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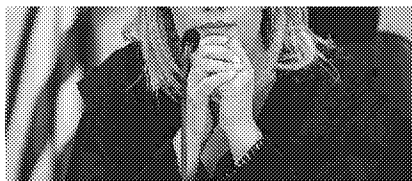
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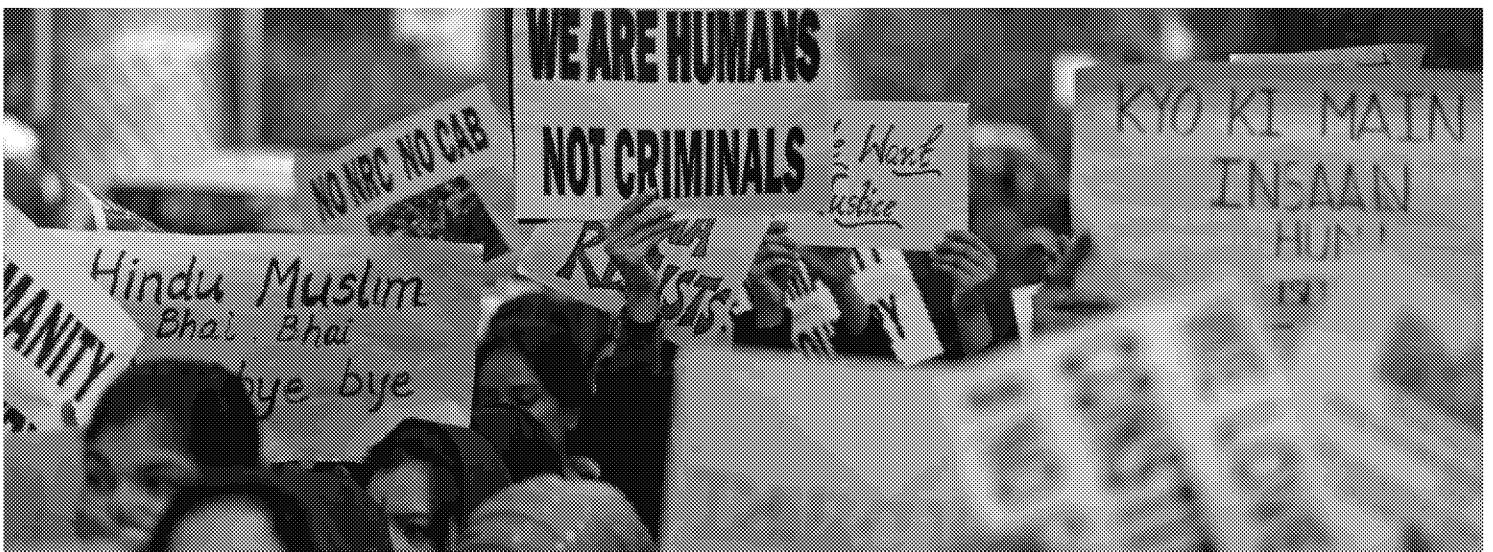
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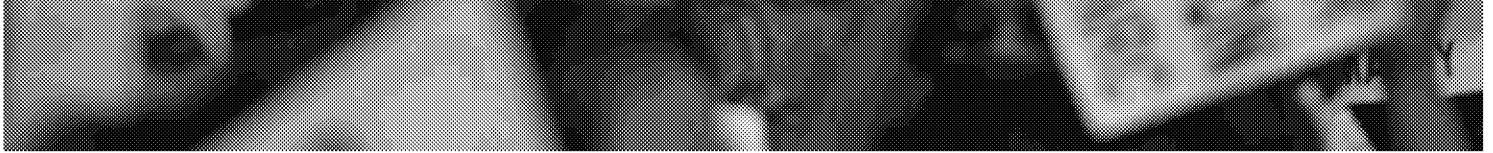
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